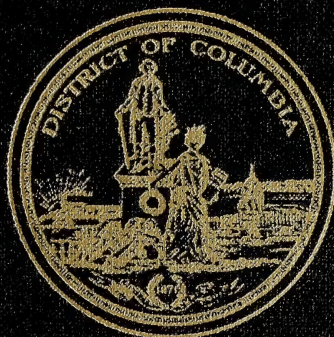


# DISTRICT OF COLUMBIA OFFICIAL CODE

*2001 Edition*

## TITLE 16

**Particular Actions, Proceedings and Matters**



40<sup>th</sup> ANNIVERSARY  
of  
HOME RULE



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# **DISTRICT OF COLUMBIA**

## ***OFFICIAL CODE***

**2001 EDITION**

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Containing the Laws, general and permanent in their nature,  
relating to or in force in the District of Columbia (Except such  
laws as are of application in the General and Permanent  
Laws of the United States) as of September 13, 2012.

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**VOLUME 9**

**Title 16**

**Particular Actions, Proceedings and Matters**



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Under Whose Direction This  
Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

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## Foreword to 2013 Commemorative Set

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LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 9 replaces any existing Volume 9 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at [customersupport@bender.com](mailto:customersupport@bender.com); or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013





## PREFACE TO THE 2001 EDITION

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The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.<sup>1</sup> It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

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1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).



framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

\_\_\_\_\_/s/\_\_\_\_\_

Linda W. Cropp

Chairman

Council of the District of Columbia

\_\_\_\_\_/s/\_\_\_\_\_

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia



## **USER'S GUIDE**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.





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6. Housing and Building Restrictions and Regulations.
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## DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
- \*23. Criminal Procedure.
24. Prisoners and Their Treatment.

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\*Title has been enacted as law.

## Title

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\*Title has been enacted as law.



## **CITE THIS BOOK**

Thus: D.C. Official Code, § \_\_\_\_\_ (2001 Ed.)



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## **DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE.**

### **TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.**

#### Chapter

1. Account.
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4. Surrogate Parenting Contracts.
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50. Criminal Records Check [Repealed].
51. Jury Selection.

Chapter

53. Unsworn Foreign Declarations; Uniform Act.

55. Strategic Lawsuits Against Public Participation.

CHAPTER 1. ACCOUNT.

Sec.

16-101. Parties.

§ 16-101. Parties.

An action of account shall and may be brought against the executor and administrator of every guardian, bailiff and receiver; and by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such a joint-tenant or tenant in common.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

**Cross references.** — Adoption subsidy payments, see § 4-301.

**Prior Codifications.** — 1981 Ed., § 16-101.  
1973 Ed., § 16-101.

**Editor's notes.** — Section 28(a) of D.C. Law 15-354 provided that Title 16 is designated Title 16 of the District of Columbia Official Code.



## CHAPTER 3. ADOPTION.

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- 16-301. Jurisdiction; rules.
- 16-302. Persons who may adopt.
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- 16-316. Appointment and compensation of counsel; guardian ad litem.
- 16-317. Recognition of foreign adoptions and elective petitions for District adoption.

## § 16-301. Jurisdiction; rules.

(a) Subject to subsection (b) of this section, the Superior Court of the District of Columbia has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

- (1) petitioner is a legal resident of the District of Columbia;
- (2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or
- (3) the child to be adopted is in the legal care, custody, or control of the Mayor or a child-placing agency licensed under the laws of the District.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(1); Apr. 30, 1988, D.C. Law 7-104, § 4(a), 35 DCR 147.)

**Cross references.** — Exclusive adoption jurisdiction, see § 11-1101.

**Prior Codifications.** — 1981 Ed., § 16-301. 1973 Ed., § 16-301.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill

No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

## CASE NOTES

## ANALYSIS

In general.  
Jurisdiction.  
Location of parties.  
Parental rights.

**In general.**

Formal adoption procedures are for the benefit of the child and they cannot be circum-

vented or substituted by other procedures. D.C. Code § 16-301 et seq. *Fuller v. Fuller*, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

A properly executed relinquishment to a child-placing agency may provide a jurisdictional underpinning to the filing of an eventual adoption petition pursuant to this section, because it severs the parental rights and responsibilities of the parent executing the relinquish-

ment. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

The jurisdictional prerequisite of subsection (b)(3) of this section is satisfied when an adoption petition is filed by petitioners who cannot meet the residency requirements of this section. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

#### Jurisdiction.

Superior Court lacked jurisdiction over adoption proceedings on the basis of its general equitable powers; adoption proceedings are purely the creatures of statute. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

Superior Court had jurisdiction over proceedings to adopt neglected child, even though the Court never formally committed the child to the Department of Human Services (DHS), but approved placement of child with maternal grandfather's family friend; the Court imposed pervasive responsibilities on the DHS, and it thus exercised a substantial degree of legal care, custody, or control. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

A court must look to substance, rather than form, in determining whether the trial court has jurisdiction over adoption petitions. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

#### Location of parties.

The court was without jurisdiction of adoption proceeding where both the child and the

child's custodian were in Virginia and so not in court's control. D.C. Code 1940, §§ 16-201, 16-203. Wathen v. Ugast, 143 F.2d 160, 1944 U.S. App. LEXIS 3034 (1944).

Adoptive parents' residency in District of Columbia was sufficient to give superior court jurisdiction to enter adoption decree as to child who was born, raised and present in District of Columbia when adoption petition was filed even though child was removed from District while adoption proceeding was pending. D.C. Code § 16-301(b)(1). Petition of J.E.G., 357 A.2d 855, 1976 D.C. App. LEXIS 285 (1976).

Since none of petitioners was a legal resident of the District of Columbia or had actually resided in the jurisdiction for at least a year preceding the filing of the petition, the only potential basis for the assertion of jurisdiction by the Superior Court was to be found in subsection (b)(3) of this section. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

#### Parental rights.

Superior Court did not have jurisdiction over adoption proceedings in which surrogate mother who had been impregnated with sperm of natural father agreed to relinquish parental rights to adoption agency licensed to do business in District of Columbia, father reserved all parental rights, and father consented to adoption by his wife; "legal care, custody, or control" of proposed adoptees never passed to child-placing agencies. D.C. Code 1981, §§ 16-301(b)(3), 32-1007(a)(1). In re S.G., 663 A.2d 1215, 1995 D.C. App. LEXIS 289 (1995).

### § 16-302. Persons who may adopt.

Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the prospective adoptee, the natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition must be amended accordingly.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-302.

1973 Ed., § 16-302.

#### CASE NOTES

##### ANALYSIS

Agreements.  
Construction and application.  
Divorce.  
In general.  
Race.

Same sex couples.  
Stepparents.  
Unmarried couples, generally.

##### Agreements.

Assurance by former husband that pre-nuptial child of wife would be included as part of



family unit was at most inducement to persuade her to marry him and no more than offer to support her child in the same household and did not amount to either a promise or agreement to legally adopt the child or to extend support beyond period of marriage.<sup>1</sup> D.C. Code § 16-301 et seq. *Fuller v. Fuller*, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

### Construction and application.

Liberal, rather than strict, construction of adoption statutes is warranted, allowing unmarried couple such as homosexual couple in committed personal relationship to adopt child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Rule of statutory construction that singular words include plural, unless such construction would be unreasonable, is not conclusive on whether statute permitting "any person" to petition for adoption allows adoption by unmarried couple; reasonableness requirement is categorical, not case-by-case, limitation that effectively turns analysis back to adoption statute itself. D.C. Code 1981, §§ 16-302, 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Paramount statutory purpose—best interests of adoptee—will be best served, and no other affected interests protected by statute will be ill served, by liberal, inclusive interpretation of adoption statute so that unmarried couples, whether same-sex or opposite-sex, who are living together in committed personal relationship, are eligible to file petitions for adoption. D.C. Code 1981, §§ 16-302, 16-305. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Adoption statute does not prescribe any limitation on how family, in child's best interests, shall be structured; focus is on how child shall best thrive, not on what particular family format shall look like. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Interpreting "person" to include "persons" in adoption statute allowing any person to petition for adoption is not "unreasonable" as used in statute requiring singular words to include plural unless such construction would be unreasonable. D.C. Code 1981, §§ 16-302, 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Statute which announces legal effects of adoption does not apply unless and until petitioner qualifies for adoption; thus, it is subject to inclusiveness of another statute allowing "any person" to petition for adoption. D.C. Code 1981, §§ 16-302, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

### Divorce.

Husband's treating of wife's prenuptial child as his natural child was not tantamount to

adoption and husband was not obligated to support child after divorce from child's mother on theory of equitable adoption. D.C. Code § 16-301 et seq. *Fuller v. Fuller*, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

### In general.

Adoption statute is intended to provide loving, nurturing home that pursues best interests of adopted child after (1) transferring to adoptive parent all legal rights, duties, and consequences of parental relationship, (2) severing rights and obligations of any natural parent who no longer will have custody of child, and (3) determining all other legal effects of adoption upon families of natural parents and adoptive parents. D.C. Code 1981, §§ 16-302, 16-305. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

When natural parent by birth or adoption is living in committed personal relationship with prospective adoptive parent, rights and relation as between adoptee, natural (including adoptive) parent, and collateral relations are not altered. D.C. Code 1981, §§ 16-302, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

More than one person may adopt a child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Husband, by taking prenuptial child of wife into family circle, did not affect adoption of child or incur continuing obligation of support. D.C. Code § 16-301 et seq. *Fuller v. Fuller*, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

Any theory of adoption is based upon proposition that the child is wanted for its own sake, and not upon proposition that it is accepted incidentally as the result of marriage to the mother. D.C. Code § 16-301 et seq. *Fuller v. Fuller*, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

### Race.

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. D.C. Code 1951, §§ 16-201-16-203, 16-211, 16-218(b), 16-225; Executive Order No. 9835, 5 U.S.C. § 631 note; 42 U.S.C. § 1411c. In re Adoption of a Minor, 228 F.2d 446, 1955 U.S. App. LEXIS 3692 (C.A.D.C. 1955).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. D.C. Code 1951, § 16-214. In re

Adoption of a Minor, 228 F.2d 446, 1955 U.S. App. LEXIS 3692 (C.A.D.C. 1955).

**Same sex couples.**

Unmarried couple, such as homosexual couple living together in committed personal relationship, may adopt child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Fact that one member of unmarried couple, such as homosexual couple, has adopted child creates no impediment to both members joining in petition. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Sexual orientation of petitioners to adoption, to the extent relevant, is to be considered under the factors of § 16-309, which address the fitness of those seeking to adopt and the best interests of the child. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

**Stepparents.**

Stepparent exception which states that rights of natural parent married to stepparent are not cut-off by stepparent's adoption of child cannot be limited to couples who marry. D.C. Code 1981, §§ 16-302, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

**Unmarried couples, generally.**

Adoption petitions by unmarried couples shall be granted or rejected on case-by-case basis in best interests of prospective adoptee, if other statutory requirements are met. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Without empirical basis of record for evaluating general impact of adoption statute as interpreted to preclude or allow adoption by unmarried couple, Court of Appeals cannot effectively use absurdity and injustice tools for

across-the-board interpretation of adoption statute. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Result of interpretation of adoption statutes should be the same whether members of unmarried couple living together in committed personal relationship seek to adopt sequentially or simultaneously. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Two persons seeking to adopt need not in all instances be married to each other. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Idea of "adoption" does not suggest inherent, traditional limitation on who may adopt; Court of Appeals thus may not use ordinary meaning of "adoption" to say that Congress assuredly made unmarried couples ineligible to adopt. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Canon of construction "expressio unius est exclusio alterius" cannot be applied to justify exclusion of unmarried couples from eligibility to adopt; no basis exists for inferring that Congress even considered adoption by unmarried couples, adoption statute does not purport to specify all eligible adopters, and typical "expressio unius" categories are not involved. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Unmarried couples living together in committed personal relationship, whether of same sex or opposite sexes, are eligible to petition court for decree of adoption. D.C. Code 1981, § 16-302. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

A joint adoption by unmarried persons was held to be in the child's best interests. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

**§ 16-303. Persons adopted.**

A person, whether a minor or an adult, may be adopted.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-303. 1973 Ed., § 16-303.

**§ 16-304. Consent; exceptions.**

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Mayor of the District, or unless a relinquishment of parental rights



with respect to the prospective adoptee has been recorded and filed as provided by section 4-1406.

(b) Consent to a proposed adoption of a person under eighteen years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the court-appointed guardian of the prospective adoptee; or

(D) from a licensed child-placing agency or the Mayor in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency, based upon consents obtained in accordance with subparagraphs (A) through (C) of this paragraph, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Mayor; or

(E) from the Mayor in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interest of the child.

(f) A person over eighteen years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted.

(g) The court may grant a petition for adoption without consent when there has been a relinquishment of parental rights and the termination of parental rights pursuant to [§ 4-1451.05].

(Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); Oct. 22, 1970, 84 Stat. 1086, Pub. L. 91-488; July 22, 1976, D.C. Law 1-75, § 5(e), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 12, 23 DCR 2544; Apr. 30, 1988, D.C. Law 7-104, § 4(b), 35 DCR 147; May 27, 2010, D.C. Law 18-158, § 201, 57 DCR 3000.)

**Prior Codifications.** — 1981 Ed., § 16-304. 1973 Ed., § 16-304.

**Effect of amendments.** — D.C. Law 18-158, in the section heading, inserted “; exceptions”; and added subsec. (g).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 201 of Newborn Safe Haven Emergency Act of 2009 (D.C. Act 18-321, March 1, 2010, 57 DCR 1842).

**Legislative history of Law 1-75.** — Law

1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-87.** — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it

was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-301.

**Legislative history of Law 18-158.** — Law 18-158, the "Newborn Safe Haven Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-180, which was referred to the Committee on Human Services and the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Signed by the Mayor on March 25, 2010, it was assigned Act No. 18-349 and transmitted to both Houses of Congress for its review. D.C. Law 18-158 became effective on May 27, 2010.

## CASE NOTES

### ANALYSIS

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### Abandonment.

#### — Burden of proof, abandonment.

Because adoption without parental consent results in drastic and permanent severing of one of the strongest and most basic of human relationships, parties seeking adoption must prove abandonment by clear and convincing evidence; hence, parent who objects to adoption does not have to proffer evidence showing that the adoption should not be granted until there has been showing of abandonment. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

In adoption proceeding trial court erred in placing burden of going forward on issue of

abandonment on natural mother; however, such error was procedural and might have been readily cured by trial court had the mother made timely objection, and thus absent showing the error affected the substantial rights of the parties, the District of Columbia Court of Appeal would not consider it on appeal. D.C. Code §§ 11-721(e), 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

#### — In general.

Adoption will be granted without parental consent on grounds of "abandonment" only when parent's conduct manifests intention to be rid of all parental obligations and to forego all parental rights. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

In determining whether there has been "abandonment" for purpose of adoption without parental consent, parental failure to support child is factor to be considered, but where the parent is financially unable to render support the failure to do so is not voluntary and such failure cannot constitute "abandonment." D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

For purpose of adoption without parental consent, "abandonment" does not require that parent leave her child on doorstep, nor does it require that she cease to feel concern for the child. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

Natural mother abandoned child, for purpose of adoption without parental consent, where mother earned salary adequate to render support to her child but failed to do so, mother never cleaned her child nor cooked meals for her, and mother never assumed responsibility



for child's religious, moral and educational training. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

The trial court, having properly found abandonment by natural mother for purpose of adoption without parental consent, was empowered to grant the adoption petition without natural mother's consent, provided the adoption was in the child's best interest. D.C. Code § 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

In determining whether there has been "abandonment" for purpose of adoption without parental consent, the trial court must consider totality of circumstances, including degree of parental love, care and attention. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

An adoption can be granted in the face of a natural parent withholding consent if court finds that parent abandoned child or if the court, after a hearing, determines that parent is withholding consent contrary to best interests of child. D.C. Code § 16-304(d, e). Petition of J.E.G., 357 A.2d 855, 1976 D.C. App. LEXIS 285 (1976).

Although statute which permits granting of adoption over parental consent where the parent has abandoned the child permits a court to terminate parental rights, it may do so only in the context of an adoption proceeding, the sine qua non of which is that the adoptive parents petition the court for the child. D.C. Code § 16-304. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

### — Termination of abandonment.

In order to show termination of abandonment for purpose of adoption without parental consent, the conduct of the parent must demonstrate genuine desire to care and provide for the child; mere expression of desire by delinquent parent for return of the child will not suffice. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

Actions of natural mother prior to time adoption petition was filed did not constitute revocation of prior abandonment of child for purpose of adoption without parental consent. D.C. Code §§ 16-304, 16-304(d). Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

### Best interests of child, generally.

Evidence was sufficient that withholding of consent was contrary to best interests of child. In re Douglas, App. D.C., 390 A.2d 1, cert. denied, 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716 (1978); In re A.R., 110 WLR 1109 (Super. Ct. 1982).

Clear and convincing evidence supported trial court's finding that child's mental and

emotional needs would be better served by remaining in foster parent's custody, in proceeding in which court ordered waiver of required consent of unwed, non-custodial father in best interest of child, who was found to be neglected, and granted adoption of child by foster parent with consent of natural mother; expert witnesses testified that child would suffer emotionally if her attachment to foster parent and foster parent's family were broken, and foster parent testified that she would allow some ongoing contact between child and father. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

When a fit, unwed, noncustodial father has seized his opportunity interest, his resulting right to presumptive custody in an adoption proceeding can be overridden only by a showing by clear and convincing evidence that it is in the best interest of the child to be placed with unrelated persons. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

In a proceeding involving competing adoption petitions, a parent's preference for her child's caretaker may be overridden only by clear and convincing evidence, regardless of whether the proceeding ultimately concludes with the termination of the parent's rights, and, absent extraordinary circumstances, regardless of whether the parent is found by clear and convincing evidence to be withholding her consent to one of the petitions contrary to the child's best interests. In re C.A.B., 4 A.3d 890, 2010 D.C. App. LEXIS 551 (2010).

Remand was required, in adoption proceeding, to allow the trial court to apply the best interests balancing test while including a preference for a fit parent before deciding whether to terminate father's parental rights and grant petition for adoption filed by prospective adoptive parents. In re S.M., 985 A.2d 413, 2009 D.C. App. LEXIS 636 (2009).

Trial court did not abuse its discretion in granting foster mother's petition to adopt children, rather than adoption petition filed by mother's cousin and cousin-in-law; trial court gave great weight to mother's choice of her cousin and cousin-in-law over foster mother, but this was overcome by children's best interests, in that it was in children's best interests not to have their relationship with their primary caretaker, who was their foster mother, disrupted, and only the foster mother had demonstrated a commitment to have children maintain and foster all their familial relationships, including cousin and cousin-in-law. In re A.T.A., 910 A.2d 293, 2006 D.C. App. LEXIS 582 (2006).

Determination as to whether parent's consent to child's adoption is being withheld contrary to child's best interest is to be made based on clear and convincing evidence. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

For purposes of determining whether waiver of mother's and father's consent to a child's adoption is warranted, race is simply a factor that may be considered by the trial court in the process of determining the best interests of the child, which pales into insignificance when compared with the health needs of the child. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Trial court adequately weighed issues of race, culture, and gender in reaching its determination that waiver of consents of mother and father to children's adoption was warranted; prospective adoptive parents, who were Caucasian, had two older African-American children in their family, and were sensitive to issues of cultural and racial heritage, and had made efforts to promote children's racial identities and awareness of their heritage, and fact that prospective adoptive parents were same-sex female couple could not, in itself, be presumed contrary to male child's best interests. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Determination in adoption proceeding that birth parents of special needs child were withholding their consent to adoption contrary to child's best interests was not abuse of discretion; birth parents continued to struggle with cocaine addiction and had demonstrated little commitment to preparing themselves to meet child's needs, large sums that they appeared to spend on children currently residing with them could have been spent on visits to special needs child, and difference in race between that child and prospective adoptive parents was insignificant in view of child's health needs. In re P.S., 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

Best interests of child standard applicable in adoption proceeding is flexible and not susceptible to ready definition; it must of necessity contain certain imprecision and elasticity. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Trial court's finding that best interests of seven-year-old girl warranted authorization of adoption by foster parents without natural father's consent was not abuse of discretion; evidence included proof that biological father suffered from significant personality disorders, that child had special needs relating to asthma and borderline intelligence, that child came to live with adoptive parents when she was nine months old after neglect by biological parents, and that adoptive parents were exceptionally qualified to address child's needs. D.C. Code 1981, §§ 16-304(a, e), 17-305(a). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Principle that child's best interests are presumptively served by being with parent, providing that parent is not unfit, holds true even

where, in contest between biological parent and nonparent, latter is in more favorable financial circumstances. D.C. Code 1981, § 16-304(a). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Statutory best interest of the child standard must be applied in determining whether to grant petition for adoption filed by unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Adoption statute incorporates into best interest of child standard a preference for fit unwed father who has grasped his opportunity interest in seeking relationship with child, which preference can be overridden only by showing by clear and convincing evidence that it is in best interest of child to be placed with unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

In a contested adoption, the statutory standard necessarily encompasses an inquiry into whether termination of relationship between the child and the natural parents is in the best interest of the child, which is an inquiry properly guided by standards set out in termination of parental rights statute. D.C. Code 1981, §§ 16-309(b)(3), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Statute providing that court may grant petition for adoption without consent of natural parent if it finds after hearing that consent is withheld contrary to best interests of child was not unconstitutionally applied by trial court when, after considering facts that stepfather had become psychological parent of children, children were under extreme emotional stress as result of being legally obligated to visit with natural father but not desiring to do so, and there was some question as to natural father's mental health and his illegal use of drugs, it granted petition for children's adoption by stepfather over objection of natural father. D.C. Code § 16-304(e). In re Petition of J. O. L., 409 A.2d 1073, 1979 D.C. App. LEXIS 526 (1979), vacated by 449 U.S. 989, 101 S. Ct. 523, 66 L. Ed. 2d 286, 1980 U.S. LEXIS 3956, 49 U.S.L.W. 3371 (1980).

Child's interest would be best served by granting petition for adoption where petitioner had given child fine stable home, psychologist testified that moving the child from her new and positive environment would affect her adversely, and natural mother had abandoned the child. Petition of H., 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

The "best interests of the child" standard for permitting adoption without parental consent if consent is withheld contrary to the best interests of the child is not unconstitutionally vague; given multitude of fact situations which must be embraced by the standard it must



contain certain imprecision, but to say that it lacks precise meaning is not to say that it is without content since such content has been explicated over the years and the standard requires the judge to make an informed and rational judgment, free of bias and favor, as to the least detrimental alternative; no more precision appears possible and none is constitutionally required. D.C. Code § 16-304(b)(2), (e); U.S. Const. Amend. 5. In re Adoption of J.S.R., 374 A.2d 860, 1977 D.C. App. LEXIS 328 (1977).

District of Columbia would withhold its consent to minor child's adoption, despite finding that adoption was in child's best interest, where evidence that prospective adoptive mother abdicated her parental responsibilities for previously adopted children, who she sent to boarding school in Uganda, suggested child would not receive the continuity of care she required for her developmental delays and behavioral issues, and showed that mother was unable and unwilling to create and maintain stability, permanency, and family integration that was the linchpin of a family built upon adoption. In the Matter of the Petition of M.M., 134 WLR 671 (, (Super. Ct. 2006)).

Parental consent withheld contrary to best interest of child.—The court granted the adoption of a child to petitioners, contrary to the statutory preference to which the biological father was entitled, where the court concluded adoption was in the best interests of the child because: (1) denial of the petition to adopt would have subjected the child to psychological harm because the biological father intended to lead the child away from petitioners and encourage him to take on a different cultural identity, resulting in a painful dilemma for the child to choose between two culturally different families; (2) adoption was the only way to make secure the child's legal status in petitioners' family, the only family the child knew, and to remove the dilemma for the child of making the choice himself; and (3) the child resided with the petitioners for more than eight years, and a strongly formed emotional relationship existed between the child, petitioners and petitioners' other son. In re Baby Boy C., 120 WLR 1309 (Super. Ct. 1992).

### Constitutional rights.

Adoption over the natural parent's objection effectively terminates that parent's interest vis-a-vis the child against his or her will, and thus the natural parent enjoys constitutional protections that may not be overridden without careful examination of factors designed to ascertain the best interests of the child. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

In a contest for adoption between a natural parent and a nonparent, the natural parent

enjoys the protection of certain constitutional rights. In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Permitting adoption, with concurrent termination of preexisting parental rights, without requiring a finding of parental unfitness, does not violate the parent's right to due process. D.C. Code 1981, § 16-304(e); U.S. Const. Amends. 5, 14. In re Petition of P.G., 452 A.2d 1183, 1982 D.C. App. LEXIS 484 (1982).

Adoption statute does not deny a parent due process merely because it fails to require a finding that the parent is unfit; there is nothing offensive to constitutional mandates in a statutory standard which focuses on the best interests of the child rather than solely on the status or abilities of the natural parent. D.C. Code § 16-304(e); U.S. Const. Amend. 5. In re Adoption of J.S.R., 374 A.2d 860, 1977 D.C. App. LEXIS 328 (1977).

Right of a natural parent to raise one's child is a fundamental and essential one which is constitutionally protected; however, it is not absolute since the state has both the right and duty to protect minor children through judicial determination of their interests and to such ends the state has substantial right of authority to protect the welfare of the child and its legitimate interest in the child's welfare may be implemented by separating the child from the parent. D.C. Code § 16-304(b)(2), (e); U.S. Const. Amend. 5. In re Adoption of J.S.R., 374 A.2d 860, 1977 D.C. App. LEXIS 328 (1977).

### Discretion of court.

The provision in the Adoption Act that parent's consent to adoption may be dispensed with, where extraordinary cause for dispensing therewith is established to satisfaction of court, vests in District Court of United States for District of Columbia a broad measure of discretion, the exercise of which can be disturbed only for grave abuse. D.C. Code Supp. V, T. 15, § 1b. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

Trial court decision to stay adoption proceeding for six months, rather than dismiss the proceeding, at the show cause hearing was not an abuse of discretion, even though the court concluded at the show cause hearing that it might lack clear and convincing evidence to support a waiver of mother's consent for adoption; there was no statutory requirement that the court dismiss the proceedings if it found that it might lack sufficient evidence to waive mother's consent to adoption, and the adoption statute provided that a court could grant an adoption decree "when it is satisfied" that adoption would be in the best interests of the child. In re H.B., 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

The determination whether a birth parent's consent to the adoption of a child has been

withheld contrary to the child's best interest is confided to the trial court's sound discretion. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial judge has broad discretion, reviewable only for abuse, with respect to determination of whether best interests of child warrant authorizing adoption without natural parent's consent. D.C. Code 1981, § 17-305(a). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Whether to grant an adoption petition over the objection of the natural parent is a matter committed by statute to the discretion of the court, provided it reaches the conclusion, after hearing, that consent to adoption is being withheld contrary to best interests of the child. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

#### **Establishment of paternity.**

In an adoption proceeding, the putative father may be required to establish paternity before he can contest the adoption or require the court to consider his opinion as to the child's best interest. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

#### **Evidence, generally.**

Clear and convincing evidence supported trial judge's finding that child's need for continuity of care and for timely integration into stable and permanent home weighed in favor of adoption, in proceeding in which court ordered waiver of required consent of unwed, non-custodial father in best interest of child, who was found to be neglected, and granted adoption of child by foster parent with consent of natural mother; child had secure and loving relationship with foster parent, foster parent had demonstrated her ability to provide stability and permanence, and removing child from her pre-adoptive, foster home would cause her to suffer substantial harm. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

Error of trial court, in proceeding on competing adoption petitions, by applying the preponderance of the evidence standard rather than the clear and convincing evidence standard when it overrode biological mother's preference that maternal grandmother's petition be granted and instead granted petition of foster parents, was not reversible error; magistrate judge also concluded that, under the clear and convincing standard, custody for grandmother was not in child's best interest, evidence was sufficient to support magistrate judge's findings that grandmother was already overwhelmed by caring for four other grandchildren, that grandmother was either unable or unwilling to participate in child's medical care and that removal from foster parents' home would have devastating effects on child's physical and men-

tal health, and family court judge on grandmother's motion for review did not disturb magistrate judge's conclusions. In re C.A.B., 4 A.3d 890, 2010 D.C. App. LEXIS 551 (2010).

Agency recommendations that create a presumption in favor of adoption are problematic when it becomes almost impossible to overcome this presumption irrespective of the efforts made by the natural parents. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Evidence supported conclusion that social services agency had fulfilled its obligation to provide services to mother and father, and to facilitate reunification, which, in turn supported trial court's waivers of mother's and father's consents to children's adoptions; agency offered referrals to mother for housing, employment, and therapy while reunification was the goal. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Trial court's refusal, at hearing in adoption proceeding to determine whether birth parents were withholding consent contrary to child's best interests, to allow birth parents to present evidence challenging fitness of prospective adoptive parents was not abuse of discretion, as purpose of hearing was to determine fitness of birth parents. In re P.S., 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

Clear and convincing evidence supported finding that it was in the child's best interests that natural mother waive consent to adoption; testimony indicated that natural mother was a long-term drug abuser, she was incarcerated at time of hearing and serving a sentence of two years and six months, she failed to complete a drug abuse rehabilitation program, and child lived with adoption petitioners for four and one-half years and had grown into a normal, healthy young boy after overcoming early asthma and weight problems. In re W.E.T., 793 A.2d 471, 2002 D.C. App. LEXIS 52 (2002).

Clear and convincing evidence must support finding that it is in the child's best interests that natural parent waive consent to adoption, and if finding is supported by such evidence, then it can be overturned only on a showing of abuse of discretion. In re W.E.T., 793 A.2d 471, 2002 D.C. App. LEXIS 52 (2002).

Clear and convincing evidence supported conclusions that mother was unfit parent and withheld consent to adoption contrary to the best interests of the child; the mother gave birth while addicted to cocaine, left him to become a boarder baby at the hospital, failed to make any provisions for his care upon his release from the hospital, and lived a life has marred by a series of criminal acts and reliance on prostitution and boyfriends for financial support. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

Evidence supported finding, in contested adoption proceeding involving foster parents



and child's maternal aunt and uncle, that birth mother's consent to aunt and uncle was withheld contrary to the best interest of the child; mother effectively denied consent to aunt and uncle, via her giving of consent to foster parents, out of anger and spite, not for the child's best interests. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Clear and convincing evidence supported trial court's finding in adoption proceeding that it was in child's best interest to be adopted and that it would be detrimental to child's interest to deny petition; child had resided with prospective adoptive parents for more than eight years, and there was expert testimony that adoption would be in child's best interest. D.C. Code 1981, § 16-304(e). In re Baby Boy C., 630 A.2d 670, 1993 D.C. App. LEXIS 202 (1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5440, 63 U.S.L.W. 3257 (1994).

Adoption statute incorporates into best interest of child standard a preference for fit unwed father who has grasped his opportunity interest in seeking relationship with child, which preference can be overridden only by showing by clear and convincing evidence that it is in best interest of child to be placed with unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Trial judge's finding that any relationship between natural mother and her child during visits was insufficiently developed to justify denial of contested adoption petition was supported by clear and convincing evidence, including evidence that the visits began after 19 months of neglect, mother completely failed to attempt to secure a stable home environment, and child had lived with proposed adoptive parent during past year, even though visits reflected stirrings of interest by mother in raising child. D.C. Code 1981, § 16-2353(b), (b)(3). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Clear and convincing evidence on issue of whether adoption by stepfather was in best interests of children supported trial court's conclusion that adoption petition of stepfather should be granted. D.C. Code § 16-304(e). In re Petition of J. O. L., 409 A.2d 1073, 1979 D.C. App. LEXIS 526 (1979), vacated by 449 U.S. 989, 101 S. Ct. 523, 66 L. Ed. 2d 286, 1980 U.S. LEXIS 3956, 49 U.S.L.W. 3371 (1980).

Clear and convincing evidence supported trial court's findings that child was suitable for adoption, that adoptors, aunt and uncle, were fit, able and willing to provide proper home and family environment conducive to child's normal development, that adoption would serve best interests of child and that natural father's consent was withheld contrary to child's best

interests. D.C. Code §§ 16-304, 16-304(e), 17-305. Petition of Douglas, 390 A.2d 1, 1978 D.C. App. LEXIS 398 (1978), writ of certiorari denied by 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716, 1978 U.S. LEXIS 4286 (1978).

Evidence, in adoption proceeding, supported trial court's findings that natural mother who had given up child a few months after his birth, who had not contributed to child's support and who had visited child only infrequently had abandoned child and that child's best interests required granting of adoption petition, over natural mother's objection. D.C. Code § 16-304(d, e). Petition of J.E.G., 357 A.2d 855, 1976 D.C. App. LEXIS 285 (1976).

### **Guardian ad litem.**

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adoptors and by department of public welfare which appeared as adoptee's legal guardian. D.C. Code §§ 3-117, 16-304(b)(2)(F), (e), 16-307. In re Adoption of Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

### **In general.**

Birth mother could not conclusively dictate the result of a contested adoption proceeding by granting consent to foster parents, where maternal aunt and uncle were also under active consideration for adoption at time consent was given, mother gave consent to foster parents to "lash out" at aunt and uncle, and mother subsequently gave consent to aunt and uncle. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Even if birth mother consents to adoption, court must terminate parental rights of putative father prior to allowing adoption, unless putative father also consents to adoption. D.C. Code 1981, § 16-304(b)(2)(A). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### **In loco parentis.**

At common law "in loco parentis" refers to person who has put himself in situation of lawful parent by assuming obligations incident to parental relation without going through formalities necessary to legal adoption. D.C. Code § 16-301 et seq. Fuller v. Fuller, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

"In loco parentis" differs from adoption in that it is strictly temporary in nature rather than permanent. D.C. Code § 16-301 et seq. Fuller v. Fuller, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

Duty of one "in loco parentis" arises only when one is willing to assume all obligations and to receive all benefits associated with one standing as natural parent to a child. Fuller v.

Fuller, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

The status assumed by one "in loco parentis" is temporary and dependent on intention of party assuming obligations of parent and may be abrogated by him at any time. Fuller v. Fuller, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

Upon divorce, where child is no longer under stepfather's care, his duty of support terminates in the absence of a showing that he intends to continue as one "in loco parentis". Fuller v. Fuller, 247 A.2d 767, 1968 D.C. App. LEXIS 218 (App. 1968).

### **Mental illness.**

If parent, through no fault of her own is unable to properly care for her child as a result of mental illness, parent still has right to consent or withhold consent to child's adoption, and this right to consent must be guarded just as zealously as the Constitution guards the right of a natural parent to the custody and companionship of his or her child. D.C. Code 1981, §§ 16-304, 16-2361(b). In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

### **Notice.**

Birth mother did not have standing to object on appeal to any deficiencies in the service on birth father of the notice of adoption; birth mother had no standing to assert the legal or constitutional rights of birth father, mother was not asserting a legal right that belonged to her, and only father himself could claim error in this regard. In re T.J.L., 998 A.2d 853, 2010 D.C. App. LEXIS 407 (2010).

Failure to notify putative natural father of adoption proceedings violated father's right to due process since father had "grasped his opportunity interest" in child. D.C. Code 1981, § 16-304(b)(2)(D); U.S.C.A. Const.Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

Unwed father was denied his procedural rights under statute when court failed to provide him with "immediate" notice of prospective adoptive parents' filing of petition to adopt his son. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father's "opportunity interest" in developing relationship with his child remained intact, and preference for custody by father arose in adoption proceeding, despite natural father's failure to take action with respect to

child after learning that mother desired to place child for adoption, where notice given to father of legal procedures involved in adoption process and child placement agency's role in those procedures was insufficient, father had not been given immediate notice of adoption petition, and agency did not undertake diligent efforts to ascertain father's whereabouts. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14; D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

### **Parental rights, generally.**

Absent termination of parental rights or some other finding that parents should not longer be permitted to influence child's future, parents' rights necessarily include right to consent, or withhold consent, to child's adoption. D.C. Code 1981, §§ 16-304, 16-2361(b). In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Natural father's preferential right to custody of child may be overridden by clear and convincing evidence that is in best interest of child to be placed with adoptive parents. D.C. Code 1981, § 16-304(e). In re Baby Boy C., 630 A.2d 670, 1993 D.C. App. LEXIS 202 (1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5440, 63 U.S.L.W. 3257 (1994).

Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to § 16-309(d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

The father's consent to the proposed adoption was not required where he abandoned the child within the meaning of subsection (d) of this section, and where the father's consent to the proposed adoption was being withheld contrary to the best interest of the child under subsection (e) of this section. In re T.L.M., 114 WLR 1553 (Super. Ct. 1986).

It was proper to waive, or not to require, the parental consent of the natural father, whose identity was never established in over 7 years. In re J.H.M., 119 WLR 1209 (Super. Ct. 1991).

In one-parent relinquishment cases, legal care, custody or control may properly be said to have transferred to the adoption agency, thus establishing the Superior Court's jurisdiction, where the other parent not only failed to retain parental rights, but is either unknown, unidentified, unlocatable, has consented to the adoption or the requirement that he or she consent



has been waived. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

### Review.

Court of Appeals reviews finding that parents have withheld their consent to child's adoption contrary to child's best interests for abuse of discretion. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

An order waiving a birth parent's consent to adoption is not a final order and may not be appealed until the adoption proceedings have been concluded; the reason is that only upon a final decree of adoption are the "rights and duties" of natural parents terminated. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Birth father could not immediately appeal order waiving his consent to adoption; no order terminating his parental rights had been entered, and, even though trial court later terminated father's visitation rights, father did not appeal that order. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

At least in some circumstances, a parent who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Order waiving birth father's consent to adoption was not appealable as order in nature of injunction; waiver of consent dispensed with need for parental consent to adoption, but it was not injunction. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle did not abuse its discretion in denying foster parents' motion to inspect agency reports and aunt and uncle's petition; it did not appear that trial court placed principal reliance on facts which foster parents claimed came from agency reports, and foster parents made no proffer that they presently disputed the veracity of those facts. D.C. Code 1981, §§ 16-304(e), 16-309(b), 16-311. In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Court of Appeals may reverse a trial court's determination, in adoption proceeding, of where the best interests of the child lie only when the judge has abused his discretion. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

When reviewing best interests of child determination in adoption proceeding, Court of Appeals addresses whether the trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors and no improper factor, and whether the

decision is supported by a firm factual foundation in the record. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Remand of adoption petition was necessary, where trial court failed to apply best interest standard of adoption statute as interpreted to include presumption in favor of fit natural parent over stranger to child, but instead found that best interest of child warranted adoption due to psychological impact on child from transfer from prospective adoptive parents to natural father. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Judgment of trial court that natural mother freely and voluntarily executed papers relinquishing her parental rights, with full understanding of adoption process and finality of her act was not plainly wrong or without evidence to support it. D.C. Code §§ 17-305(a), 32-786(a). L. v. Lutheran Social Services of National Capital Area, Inc., 418 A.2d 133, 1980 D.C. App. LEXIS 336 (1980).

Findings of fact and conclusions of law were necessary in order to review dismissal of petition of maternal grandparents for adoption of minor grandchild, with respect to which the trial judge stated only that grandparents had not established the facts to justify the adoption and that withholding of consent by the natural father had not been contrary to the best interests of the child. D.C. Code § 16-304(b)(2)(B), (d, e); D.C. Code SCR, Dom.Rel. Rule 52(a). Petition of C., 314 A.2d 486, 1974 D.C. App. LEXIS 349 (1974).

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. D.C. Code §§ 16-301 to 16-304, 16-304(e), 16-307, 16-309(b)(3), 16-312, 19-316. In re J.H., 313 A.2d 874, 1974 D.C. App. LEXIS 344 (1974).

### Standard of proof.

Trial court's finding that parents have withheld their consent to child's adoption contrary to child's best interests must be supported by clear and convincing evidence such that the possibility of an erroneous judgment does not lie in equipoise between the two sides. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

In the ordinary case where biological parent's adoptive consent is withheld, the trial court must apply a clear and convincing evidence standard to determine whether a nonparent's adoption petition can be considered despite the

biological parent's decision to deny consent. D.C. Code 1981, § 16-304(e). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

In determining whether parental consent to adoption is being withheld contrary to the best interests of the child a standard of proof greater than the preponderance of the evidence test is warranted, although not constitutionally required; appropriate standard is the clear and convincing evidence test. D.C. Code § 16-304(b)(2), (e). In re Adoption of J.S.R., 374 A.2d 860, 1977 D.C. App. LEXIS 328 (1977).

As applied in determining whether parental consent to adoption was being withheld contrary to the child's best interests, the substantial preponderance test, as applied by the trial court was substantially identical to the required "clear and convincing" test. D.C. Code § 16-304(b)(2), (e). In re Adoption of J.S.R., 374 A.2d 860, 1977 D.C. App. LEXIS 328 (1977).

### **Termination of parental rights.**

An adoption following the waiver of a birth parent's consent effectively terminates that parent's interest in the care, custody and control of her child. In re H.B., 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

Preadoption termination of parental rights to minor should not have been granted, and such termination should, instead, have been obtained through statutory procedure to accomplish termination of parental rights as part of adoption proceeding. D.C. Code §§ 16-304, 16-2305, 16-2320; D.C. Code SCR, Neglect Rule 18(c). White v. M., 358 A.2d 328, 1976 D.C. App. LEXIS 284 (1976).

As a prerequisite for either licensed child placement agency, commissioner, or guardian of the person of a minor to exercise power to consent to adoption, parental rights must have been judicially terminated. D.C. Code §§ 3-117(3), 16-301 et seq., 16-2301(20)(D), (22), 32-786. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

As long as there exists a statutory procedure to accomplish termination of parental rights, district and superior court in the District of Columbia must follow that rule despite its administrative shortcoming. D.C. Code § 16-304. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

### **Unfitness.**

Finding of parental unfitness on part of natural parent is not constitutional prerequisite to granting an adoption petition notwithstanding lack of parental consent. D.C. Code 1981, § 16-304(e). In re Baby Boy C., 630 A.2d 670, 1993 D.C. App. LEXIS 202 (1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5440, 63 U.S.L.W. 3257 (1994).

Statutory preference for fit unwed father who has grasped his constitutionally protected opportunity interest to parent his child may be overridden if it is shown by clear and convincing evidence that proposed adoption is in best interest of child, for that interest is paramount consideration; at least where child has never lived with biological father, no finding of parental unfitness is required. D.C. Code 1981, § 16-304(e). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

### **Violence.**

Fear of possible violence by father toward himself or others if he learned of proposed adoption was not an "exceptional showing" needed before adoption could be approved without preadoption notice to father who had "grasped his opportunity interest." D.C. Code 1981, §§ 16-304(b)(2)(A), (d), 16-306(a); U.S. Const. Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

### **Voluntariness of relinquishment.**

In proceedings on petition by a child's foster mother to adopt the child, any error by the trial court in determining that mother abandoned the child, so as to warrant waiver of mother's consent to child's adoption, was harmless, because mother failed to challenge the alternate basis supporting the court's decision to waive her consent to the adoption, which was that the mother's consent to the adoption should be waived because it was in the child's best interest. In re N.N.N., 985 A.2d 1113, 2009 D.C. App. LEXIS 649 (2009).

Absent consent of all the parties, only "cause" justifying court-ordered revocation of natural parent's relinquishment of parental rights once filed with the court is a conclusion that relinquishment was not given voluntarily, that is, has been induced by fraud, coercion, material mistake, or other factors. D.C. Code § 32-786(a). L. v. Lutheran Social Services of National Capital Area, Inc., 418 A.2d 133, 1980 D.C. App. LEXIS 336 (1980).

### **Withdrawal of consent.**

In adoption proceeding involving question whether natural mother, who had freely and voluntarily given consent to adoption of her illegitimate child, could withdraw that consent, the fact that Board of Public Welfare and guardian ad litem appointed to represent the interest of the infant recommended against adoption was not controlling where both recommendations were made on assumption that the natural mother, as a matter of law, rightfully withdrew her consent. D.C. Code 1940, §§ 16-201 to 16-203. In re Adoption of a Minor, 144 F.2d 644, 1944 U.S. App. LEXIS 2900 (1944).



Where consent to adoption was signed by natural father on August 30 and where father did not indicate desire to revoke consent until the following March 15, father was properly not permitted to withdraw his consent., D.C. Code § 16-304. In re Adoption of D., 324 A.2d 200, 1974 D.C. App. LEXIS 258 (1974).

#### **Withholding of consent.**

Trial court did not abuse its discretion, at hearing on adoption petition filed by couple with whom neglected child had been placed, by finding that the biological mother had withheld her consent to the adoption contrary to the child's best interest and waived her consent to the adoption; at the time of the hearing the four-year-old child had lived with the adoptive couple for approximately half her life and had known the couple even longer, social worker testified that it would be very disruptive for the child if she left couple's home and that biological mother did not have stable housing, though couple were in their seventies they were in good health and had formed a strong bond with the child, biological mother failed to participate in recommended services including therapy, biological mother had limited interaction with the child, and biological mother failed to appear at show cause hearing. In re W.D., 988 A.2d 456, 2010 D.C. App. LEXIS 16 (2010).

Evidence supported trial court's determination that mother was withholding her consent to children's adoption by their foster mother contrary to their best interests; foster mother was children's primary caretaker, and continuity of their care was best served by allowing them to remain with her, physical, mental, and emotional health of foster mother was exemplary, and she was exceptionally suited to care for needs of children, including their special medical needs stemming from their prenatal cocaine exposure and premature birth, foster mother was eager to maintain and foster children's familial relationships, mother had abandoned children at birth, and she continued to abuse drugs. In re A.T.A., 910 A.2d 293, 2006 D.C. App. LEXIS 582 (2006).

The trial court can waive otherwise necessary parental consents to a proposed adoption if the court determines that the parents are withholding their consents contrary to the child's best interests. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

The determination whether a birth parent's consent to the adoption of a child has been withheld contrary to the child's best interest is confided to the trial court's sound discretion; the trial court's findings in this regard must be supported by clear and convincing evidence. In re H.B., 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

When a biological parent declines to consent to a proposed adoption, the prospective adoptive parent must ordinarily show by clear and convincing evidence that consent is being withheld contrary to the child's best interest. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Superior Court could bifurcate adoption proceeding to decide first whether the birth parents were fit and were withholding consent contrary to the best interests of the child, and, thus, the Court in the first stage could prohibit examination of the financial and personal backgrounds of the prospective adoptive parents pending resolution of the consent issue; allowing any substantial inquiry into the lives and backgrounds of the prospective adoptive parents would frustrate the purpose of bifurcation and make the show cause hearing the equivalent of a plenary hearing on the adoption petition. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle permissibly focused its decision on birth mother's reasons for initially withholding consent to aunt and uncle; those reasons, which caused mother to "lash out" at aunt and uncle, bore directly on whether the withholding of consent was indeed at the time motivated by and in the best interests of child. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Where the consent of the natural parent in favor of one party is made to the express exclusion of another party actively engaged in adoption discussions with that parent, such exclusion is tantamount to a withholding of consent and may be treated as constructive withholding, for purposes of statute permitting court to grant adoption petition without any statutorily specified consents when court finds that consent or consents were withheld contrary to the best interest of the child. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

### **§ 16-305. Petition for adoption.**

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of ..... for adoption." The

petition or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Mayor or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When any of the above facts is known to the Mayor, or a licensed child-placing agency that as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Mayor or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each.

(Dec. 23, 1963, 77 Stat. 538, Pub. L. 88-24, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); Apr. 30, 1988, D.C. Law 7-104, § 4(c), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-305.  
1973 Ed., § 16-305.

**Legislative history of Law 7-104.** — For

legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-301.

## CASE NOTES

### ANALYSIS

Construction and application.

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Purpose.

Race.

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Unmarried couples.

Validity.

202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Adoption statute does not prescribe any limitation on how family, in child's best interests, shall be structured; focus is on how child shall best thrive, not on what particular family format shall look like. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

### Construction and application.

Liberal, rather than strict, construction of adoption statutes is warranted, allowing unmarried couple such as homosexual couple in committed personal relationship to adopt child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

### In general.

More than one person may adopt a child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-

### Purpose.

Adoption statute is intended to provide loving, nurturing home that pursues best interests of adopted child after (1) transferring to adoptive parent all legal rights, duties, and consequences of parental relationship, (2) severing rights and obligations of any natural parent who no longer will have custody of child, and (3) determining all other legal effects of adoption upon families of natural parents and adoptive parents. D.C. Code 1981, §§ 16-302, 16-305. In



re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

### Race.

If race is to be a relevant factor in adoption a court cannot properly weigh it either automatically or presumptively, i.e., without regard to evidence, for or against cross racial adoption for to do so would add a constitutionally proscribed racially discriminatory policy to evaluation of the child's best interest. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a factor in adoption, only through detailed, written findings and conclusions will the trial court be able to explain its thinking process with sufficient clarity to assure the data needed for effective scrutiny review. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is relevant in an adoption contest, the trial court must make a three-step evaluation: (1) how each family's race is likely to affect the child's development of a sense of identity, including racial identity; (2) how the families compare in that regard; and (3) how significant the racial differences between the families are when all relevant factors are considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

In evaluating identity factor where race is relevant in an adoption contest the court must evaluate the probable effect of each family's race and related attitudes on the child's sense of belonging in the family and community, the child's self-esteem and confidence and the child's ability to cope with problems outside the family and relevant questions include to what extent the family will expose the child to others of his or her own race and what efforts the family will most likely make to foster the child's sense of identity, including racial and cultural identity and self-esteem. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Fact that race apparently tipped decision in favor of intraracial adoption, i.e., favoring grandparents of the same race as opposed to foster parents of different race, did not of itself

suggest a discriminatory result. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

For effective review when race is a critical factor in adoption, the appellate court needs to understand exactly how the trial court made the judgment as to race that it did: whether as a precisely analyzed determination, based on carefully thought-through comparisons of the parties drawn from record evidence, or a more generalized conclusion that race always favors petitioners of the same race, a judgment reflecting an impermissible intellectual shortcut. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a statutory factor in adoption, appellate review of judicial discretion under the statute must be as exacting as equal protection scrutiny of the statute. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where trial court acted within proper scope of its discretion, i.e., range of permissible alternatives, and considered all relevant factors prescribed by the statute and no improper factor, focus of appellate inquiry was limited to whether determination that race factor tipped the scales in favor of intraracial adoption was sufficiently substantial, based on a firm factual foundation of record, to withstand strict equal protection scrutiny and trial court was held accountable for affirmatively justifying the judgment in every material respect. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where there is every indication from trial court analysis that, but for consideration of race, adoption decision might have been different, any determination as to race that is not precisely articulated on a comparative basis will fail to survive strict scrutiny. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Intent to discourage an interracial marriage is not a sustainable rationale for implementing an adoption statute containing race as a criteria, nor is even a well-intentioned effort to protect a child against community prejudice a

proper justification of itself for an adoption decision. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Judgment granting intraracial adoption, as opposed to adoption by foster parents of different race, was reversed where race was the deciding factor and trial court made no specific findings as to how race was likely to affect the particular black child growing up, respectively, in families of white foster parents and of black paternal grandparents and did not articulate comparative analysis of the families in their respective abilities to accommodate race and significance of racial differences when all relevant factors were considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Although race, among other factors, can be relevant in deciding between competing petitions for adoption, since adoption statute expressly incorporates race the statute, as well as the trial court's application thereof, must survive strict scrutiny to comport with equal protection. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amend. 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where Social Services Administration did not oppose petition filed by husband and wife of different racial background for adoption of child born of parents of a similar mixed racial background and had full knowledge of facts regarding parties' race and religion and trial court also possessed such information and indicated its approval of the adoption subject to filing of amended adoption petition including racial and religious information which was required by statute and which prospective adoptive parents had refused to include, the adoption petition would be considered amended to conform to information already possessed by the trial court. D.C. Code §§ 16-305, 16-307, 32-786; U.S. Const. Amend. 5. In re De F., 307 A.2d 737, 1973 D.C. App. LEXIS 325 (1973).

### Termination of parental rights.

Maternal grandparents' petition to adopt child could still be granted even after termination of mother's parental rights. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### Unmarried couples.

Adoption petitions by unmarried couples shall be granted or rejected on case-by-case

basis in best interests of prospective adoptee, if other statutory requirements are met. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Without empirical basis of record for evaluating general impact of adoption statute as interpreted to preclude or allow adoption by unmarried couple, Court of Appeals cannot effectively use absurdity and injustice tools for across-the-board interpretation of adoption statute. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Unmarried couple, such as homosexual couple living together in committed personal relationship, may adopt child. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Fact that one member of unmarried couple, such as homosexual couple, has adopted child creates no impediment to both members joining in petition. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Two persons seeking to adopt need not in all instances be married to each other. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Idea of "adoption" does not suggest inherent, traditional limitation on who may adopt; Court of Appeals thus may not use ordinary meaning of "adoption" to say that Congress assuredly made unmarried couples ineligible to adopt. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Canon of construction "expressio unius est exclusio alterius" cannot be applied to justify exclusion of unmarried couples from eligibility to adopt; no basis exists for inferring that Congress even considered adoption by unmarried couples, adoption statute does not purport to specify all eligible adopters, and typical "expressio unius" categories are not involved. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Paramount statutory purpose—best interests of adoptee—will be best served, and no other affected interests protected by statute will be ill served, by liberal, inclusive interpretation of adoption statute so that unmarried couples, whether same-sex or opposite-sex, who are living together in committed personal relationship, are eligible to file petitions for adoption. D.C. Code 1981, §§ 16-302, 16-305. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Result of interpretation of adoption statutes should be the same whether members of un-



married couple living together in committed personal relationship seek to adopt sequentially or simultaneously. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a) *In re M.M.D.*, 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Joint adoption by unmarried persons was in the child's best interests. *In re D.S.*, 123 WLR 1149 (Super. Ct. 1995).

#### **Validity.**

Adoption statute does not deny equal protec-

tion although it permits a court to take race into account. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amend. 14. *In re Petition of R.M.G.*, 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

## **§ 16-306. Notice of adoption proceedings.**

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-306. 1973 Ed., § 16-306.

### **CASE NOTES**

#### **ANALYSIS**

Due diligence.  
Duties of father.  
Failure to notify, generally.  
Fear of violence.  
In general.  
Notice by publication.  
Opportunity interest.  
Parties.  
Rights of father, generally.  
Show cause orders.

#### **Due diligence.**

Child placement agency violated unwed father's constitutional right to procedural due process by failing to use due diligence to find father in order to provide timely service of required immediate, official notice of adoption proceedings; agency did not obtain addresses of father's relatives, did not tell court of other possible addresses for father, did not attempt to update information upon being told by mother that father's address could have changed and upon learning from father that he was about to move to another country. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

To satisfy unwed father's constitutional right to due process prior to allowing adoption of

child, child placement agency would have to engage in due diligence to locate father. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

#### **Duties of father.**

Unwed father did not have responsibility to keep child placement agency informed of his current address if he wished to have prompt notice of adoption proceeding, where there was no indication whatsoever in any information which agency sent to father that there was pending judicial proceeding, let alone that agency and father were "parties" to that proceeding, but instead father only knew that agency was seeking his consent to adoption of his child. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

#### **Failure to notify, generally.**

Entry of decree for adoption of illegitimate child, when interests of father were not fully before court for consideration, his name and location being known, and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee, was error. D.C. Code 1940, §§ 16-201, 16-202. *In re Adoption of*

a Minor, 155 F.2d 870, 1946 U.S. App. LEXIS 2294 (1946).

Birth mother did not have standing to object on appeal to any deficiencies in the service on birth father of the notice of adoption; birth mother had no standing to assert the legal or constitutional rights of birth father, mother was not asserting a legal right that belonged to her, and only father himself could claim error in this regard. In re T.J.L., 998 A.2d 853, 2010 D.C. App. LEXIS 407 (2010).

#### **Fear of violence.**

Fear of possible violence by father toward himself or others if he learned of proposed adoption was not an "exceptional showing" needed before adoption could be approved without preadoption notice to father who had "grasped his opportunity interest." D.C. Code 1981, §§ 16-304(b)(2)(A), (d), 16-306(a); U.S. Const.Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

#### **In general.**

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. D.C. Code 1940, §§ 16-201, 16-202. In re Adoption of a Minor, 155 F.2d 870, 1946 U.S. App. LEXIS 2294 (1946).

Where parent had been permanently divested custody of her child by lawful court order, she was not entitled to notice or opportunity to be heard prior to child's adoption. U.S. Const. Amend. 14. Carson v. Elrod, 411 F. Supp. 645, 1976 U.S. Dist. LEXIS 16846 (1976), affirmed without opinion by 562 F.2d 44 (4th Cir. Va. 1977).

Information which child placement agency furnished to unwed father failed to provide minimum notice required by due process to enable father to assert his right to custody of child at meaningful time and in meaningful manner, where letters sent by agency to African father did not inform father of his basic right to seek custody of child and of his right to participate at court hearing that would be scheduled to determine permanent placement of child, but rather merely told father that he had right to acknowledge or deny paternity and that effort had to be made to inform father of plans for adoption, and provided father with adoption consent forms. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Child placement agency's role as state actor in adoption process requires that it provide natural father with a certain minimum amount of information concerning his procedural rights in adoption proceeding. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

#### **Notice by publication.**

Superior Court attached no legal significance to notice by publication, even as a last-ditch effort to reach an unnamed birth father. In re Three Adoption Cases, 118 WLR 645 (Super. Ct. 1990).

#### **Opportunity interest.**

A putative father is entitled to notice of a pending adoption proceeding so that he may assert right to grasp his opportunity interest in claiming the obligations of parenthood. U.S.C. Const.Amend. 14. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Putative natural father "grasped his opportunity interest" in child, so as to give rise to due process protection in adoption proceeding, where father filed paternity and custody action one week after child's birth, seasonably deposed mother and her father in unsuccessful effort to locate child, and was denied statutory notice of filing of adoption petition. D.C. Code 1981, § 16-310; U.S.C. Const.Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

Failure to notify putative natural father of adoption proceedings violated father's right to due process since father had "grasped his opportunity interest" in child. D.C. Code 1981, § 16-304(b)(2)(D); U.S.C.A. Const.Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

Unwed father's "opportunity interest" in developing relationship with his child remained intact, and preference for custody by father arose in adoption proceeding, despite natural father's failure to take action with respect to child after learning that mother desired to place child for adoption, where notice given to father of legal procedures involved in adoption process and child placement agency's role in those procedures was insufficient, father had not been given immediate notice of adoption petition, and agency did not undertake diligent efforts to ascertain father's whereabouts. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14; D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy



C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

#### **Parties.**

Under statute requiring notice of adoption proceeding to be directed to all "parties to the petition" who do not appear and consent, all persons whom statute requires to be named in petition are included. D.C. Code 1940, §§ 16-201, 16-202. *In re Adoption of a Minor*, 160 F.2d 928, 1947 U.S. App. LEXIS 2711 (1947).

#### **Rights of father, generally.**

The adoption statute requires that known natural father receive official notice unless he voluntarily appears and consents pursuant to some unofficial notice or knowledge. D.C. Code 1940, §§ 16-201, 16-202. *In re Adoption of a Minor*, 160 F.2d 928, 1947 U.S. App. LEXIS 2711 (1947).

Unwed father was denied his procedural rights under statute when court failed to provide him with "immediate" notice of prospective adoptive parents' filing of petition to adopt his

son. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to § 16-309(d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. *In re Three Adoption Cases*, 118 WLR 645 (Super. Ct. 1990).

#### **Show cause orders.**

Practice of Family Division of providing notice to interested parties only upon issuance of show cause order in adoption proceeding violates statute commanding that due notice of pending adoption proceeding be sent "immediately" to natural parents. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, § 16-306(a). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

### **§ 16-307. Investigation, report, and recommendation.**

(a) Except as provided by section 16-308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

- (1) the licensed child-placing agency by which the case is supervised; or
- (2) the Mayor, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

- (1) an investigation of:
  - (A) the truth of the allegations of the petition;
  - (B) the environment, antecedents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;
  - (C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and
  - (D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (§ 4-301).

- (2) a written report to the court of the findings of the investigation; and
- (3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); Jan. 2, 1974, 87 Stat. 1061, Pub. L. 93-241, § 2(a); Apr. 30, 1988, D.C. Law 7-104, § 4(d), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-307. 1973 Ed., § 16-307.

**Emergency legislation.** — For temporary provisions requiring, on an emergency basis, criminal background investigations for individuals residing in foster family homes or other homes in which children are placed by order, see § 2-15 of the Criminal Background Investigation for the Protection of Children Emer-

gency act of 1998 (D.C. Act 12-431, August 6, 1998, 45 DCR 5915) and § 2-11 of the Criminal Background Investigation for the Protection of Children Legislative Review Emergency Act of 1998 (D.C. Act 12-505, November 20, 1998, 45 DCR 8134).

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-301.

## CASE NOTES

### In general.

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. D.C. Code §§ 16-301 to 16-304, 16-304(e), 16-307, 16-309(b)(3), 16-312, 19-316. In re J.H., 313 A.2d 874, 1974 D.C. App. LEXIS 344 (1974).

Where Social Services Administration did not oppose petition filed by husband and wife of different racial background for adoption of child born of parents of a similar mixed racial background and had full knowledge of facts regarding parties' race and religion and trial court also possessed such information and indicated its approval of the adoption subject to filing of amended adoption petition including racial and religious information which was required by statute and which prospective adoptive parents

had refused to include, the adoption petition would be considered amended to conform to information already possessed by the trial court. D.C. Code §§ 16-305, 16-307, 32-786; U.S. Const. Amend. 5. In re De F., 307 A.2d 737, 1973 D.C. App. LEXIS 325 (1973).

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adoptors and by department of public welfare which appeared as adoptee's legal guardian. D.C. Code §§ 3-117, 16-304(b)(2)(F), (e), 16-307. In re Adoption of Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

Full investigation in surrogate mother situation.—In a surrogate mother situation, a full investigation into the circumstances of the proposed adoption is warranted, including a careful inquiry into the background of the surrogate mother, child, and prospective parents. In re R.K.S., 112 WLR 1117 (Super. Ct. 1984).

## § 16-308. Investigations when prospective adoptee is adult or petitioner is spouse or domestic partner of natural parent.

(a) The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) The prospective adoptee is an adult; or

(2) The petitioner is a spouse or domestic partner of the natural parent of the prospective adoptee and the natural parents consents to the adoption or joins in the petition for adoption.

(b) In the circumstances specified in subsection (a)(2) of this section, the petition need not contain the information concerning race and religion as specified in § 16-305(4) and (5).

(c) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3), but shall exclude a domestic partner who is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of the natural parent.

(d) Nothing in this section shall be construed to waive the requirements of §§ 4-1305.01 through 4-1305.09, including the requirement of a fingerprint-based criminal records check.



(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1; Oct. 30, 1975, D.C. Law 1-25, § 3, 22 DCR 2465; July 18, 2008, D.C. Law 18-33, § 3(a), 56 DCR 4269; Sept. 11, 2009, D.C. Law 18-47, § 3, 56 DCR 4960.)

**Prior Codifications.** — 1981 Ed., § 16-308. 1973 Ed., § 16-308.

**Effect of amendments.** — D.C. Law 18-33 rewrote the section.

D.C. Law 18-47 rewrote the section.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 3 of the Adoption and Safe Families Temporary Amendment Act of 2008 (D.C. Law 17-133, March 26, 2008, law notification 55 DCR 4464).

For temporary (225 day) amendment of section, see § 3 of the Safe families Continuing Compliance Temporary Amendment Act of 2008 (D.C. Law 17-297, March 20, 2009, law notification 56 DCR 3008).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 3 of Adoption and Safe Families Emergency Amendment Act of 2007 (D.C. Act 17-232, December 27, 2007, 55 DCR 233).

For temporary (90 day) amendment of section, see § 3 of Adoption and Safe Families Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-317, March 19, 2008, 55 DCR 3415).

For temporary (90 day) amendment of section, see § 3 of Adoption and Safe Families Continuing Compliance Emergency Amendment Act of 2008 (D.C. Act 17-559, October 27, 2008, 55 DCR 12010).

For temporary (90 day) amendment of section, see § 3 of Adoption and Safe Families Continuing Compliance Congressional Review

Emergency Amendment Act of 2009 (D.C. Act 18-2, January 23, 2009, 56 DCR 1622).

**Legislative history of Law 1-25.** — Law 1-25, the “Stepparent Adoption Facilitation Act,” was introduced in Council and assigned Bill No. 1-122. The Bill was adopted on first and second readings on July 1, 1975, and July 15, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act. No. 1-37 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 18-33.** — Law 18-33, the “Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009,” was introduced in Council and assigned Bill No. 18-66, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 21, 2008, it was assigned Act No. 18-66 and transmitted to both Houses of Congress for its review. D.C. Law 18-33 became effective on July 18, 2008.

**Legislative history of Law 18-47.** — Law 18-47, the “Adoption and Safe Families Amendment Act of 2009,” was introduced in Council and assigned Bill No. 18-12, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 5, 2009, and June 2, 2009, respectively. Signed by the Mayor on June 22, 2009, it was assigned Act No. 18-122 and transmitted to both Houses of Congress for its review. D.C. Law 18-47 became effective on September 11, 2009.

## CASE NOTES

### ANALYSIS

Race.  
Stepparents.  
Surrogate parent.

### Race.

If race is to be a relevant factor in adoption a court cannot properly weigh it either automatically or presumptively, i.e., without regard to evidence, for or against cross racial adoption for to do so would add a constitutionally proscribed racially discriminatory policy to evaluation of the child's best interest. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a factor in adoption, only through detailed, written findings and conclu-

sions will the trial court be able to explain its thinking process with sufficient clarity to assure the data needed for effective scrutiny review. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is relevant in an adoption contest, the trial court must make a three-step evaluation: (1) how each family's race is likely to affect the child's development of a sense of identity, including racial identity; (2) how the families compare in that regard; and (3) how significant the racial differences between the families are when all relevant factors are considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2);

U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

In evaluating identity factor where race is relevant in an adoption contest the court must evaluate the probable effect of each family's race and related attitudes on the child's sense of belonging in the family and community, the child's self-esteem and confidence and the child's ability to cope with problems outside the family and relevant questions include to what extent the family will expose the child to others of his or her own race and what efforts the family will most likely make to foster the child's sense of identity, including racial and cultural identity and self-esteem. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Fact that race apparently tipped decision in favor of intraracial adoption, i.e., favoring grandparents of the same race as opposed to foster parents of different race, did not of itself suggest a discriminatory result. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Judgment granting intraracial adoption, as opposed to adoption by foster parents of different race, was reversed where race was the deciding factor and trial court made no specific findings as to how race was likely to affect the particular black child growing up, respectively, in families of white foster parents and of black paternal grandparents and did not articulate comparative analysis of the families in their respective abilities to accommodate race and significance of racial differences when all relevant factors were considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

For effective review when race is a critical factor in adoption, the appellate court needs to understand exactly how the trial court made the judgment as to race that it did: whether as a precisely analyzed determination, based on carefully thought-through comparisons of the parties drawn from record evidence, or a more generalized conclusion that race always favors petitioners of the same race, a judgment reflecting an impermissible intellectual shortcut. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a statutory factor in adoption, appellate review of judicial discretion under the statute must be as exacting as equal protection scrutiny of the statute. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where trial court acted within proper scope of its discretion, i.e., range of permissible alternatives, and considered all relevant factors prescribed by the statute and no improper factor, focus of appellate inquiry was limited to whether determination that race factor tipped the scales in favor of intraracial adoption was sufficiently substantial, based on a firm factual foundation of record, to withstand strict equal protection scrutiny and trial court was held accountable for affirmatively justifying the judgment in every material respect. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where there is every indication from trial court analysis that, but for consideration of race, adoption decision might have been different, any determination as to race that is not precisely articulated on a comparative basis will fail to survive strict scrutiny. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Adoption statute does not deny equal protection although it permits a court to take race into account. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amend. 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Although race, among other factors, can be relevant in deciding between competing petitions for adoption, since adoption statute expressly incorporates race the statute, as well as the trial court's application thereof, must survive strict scrutiny to comport with equal protection. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amend. 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Intent to discourage an interracial marriage is not a sustainable rationale for implementing an adoption statute containing race as a criteria, nor is even a well-intentioned effort to protect a child against community prejudice a proper justification of itself for an adoption decision. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4,



5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

#### **Stepparents.**

Stepparent exception which states that rights of natural parent married to stepparent are not cut-off by stepparent's adoption of child applied to prevent adoptive parent's rights from being terminated by his homosexual partner's adoption of the child; stepparent exception applied by analogy since the unmarried couple was living together in committed personal relationship, and allowing cut-off of adoptive parent's rights would lead to absurd results and obvious injustice. D.C. Code 1981, § 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Stepparent exception which states that rights of natural parent married to stepparent are not cut-off by stepparent's adoption of child cannot be limited to couples who marry. D.C. Code 1981, §§ 16-302, 16-312(a). In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

#### **Surrogate parent.**

A motion to dispense with the investigation, report, and interlocutory decree is denied in a surrogate mother situation, despite paragraph (2) of this section. This situation warrants a full investigation, under § 16-307, into the circumstances of the proposed adoption, including a careful inquiry into the background of the surrogate mother, the child, and the prospective parents. In re R.K.S., 112 WLR 1117 (Super. Ct. 1984).

### **§ 16-309. Adoption proceedings.**

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16-307 to the court and thereupon the court shall proceed to act upon the petition.

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education;

(3) the adoption will be for the best interests of the prospective adoptee; and

(4) the adoption form has been completed by the petitioner pursuant to section 10 of the Vital Records Act of 1981.

(b-1) In determining whether the petitioner will be able to give the prospective adoptee a proper home and education, the court shall give due consideration to any assurance by the Mayor that he will provide or contribute funds for the necessary maintenance or medical care of the prospective adoptee under an adoption subsidy agreement under § 4-301.

(c)(1) Except as provided in paragraph (2) of this subsection, a final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least 6 months ("6-month requirement").

(2) A prospective adoptee shall be exempt from the 6-month requirement if he or she is 18 years of age or older.

(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory decree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside

for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.

(f) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate.

(Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1; Jan. 2, 1974, 87 Stat. 1061, Pub. L. 93-241, § 2(b); Oct. 8, 1981, D.C. Law 4-34, § 29(e), 28 DCR 3271; Mar. 24, 1998, D.C. Law 12-81, § 10(a), 45 DCR 745; Sept. 24, 2010, D.C. Law 18-230, § 603, 57 DCR 6951.)

**Prior Codifications.** — 1981 Ed., § 16-309. 1973 Ed., § 16-309.

**Effect of amendments.** — D.C. Law 18-230 rewrote subsec. (c), which had read as follows: “(c) A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months.”

**Legislative history of Law 4-34.** — Law 4-34, the “Vital Records Act of 1981,” was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 18-230.** — Law 18-230, the “Adoption Reform Act of 2010,” was introduced in Council and assigned Bill No. 18-547, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 12, 2010, it was assigned Act No. 18-547 and transmitted to both Houses of Congress for its review. D.C. Law 18-230 became effective on September 24, 2010.

**References in text.** — The “Vital Records Act of 1981,” referred to in paragraph (b)(4), is D.C. Law 4-34.

Section 10 of the Act is codified at § 7-209.

## CASE NOTES

### ANALYSIS

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### Abandonment.

Child's interest would be best served by



granting petition for adoption where petitioner had given child fine stable home, psychologist testified that moving the child from her new and positive environment would affect her adversely, and natural mother had abandoned the child. *Petition of H.*, 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

The trial court, having properly found abandonment by natural mother for purpose of adoption without parental consent, was empowered to grant the adoption petition without natural mother's consent, provided the adoption was in the child's best interest. D.C. Code § 16-304(d). *Petition of H.*, 391 A.2d 1370, 1978 D.C. App. LEXIS 312 (1978).

#### **Agency error.**

Any failure of Department of Human Services (DHS) to provide reunification services to father did not warrant denial of motion to terminate father's parental rights and application to allow foster mother to adopt child, where adoption was demonstrably in child's best interests; child could not be punished for alleged wrongs of the bureaucracy. D.C. Code 1981, § 16-2353(b). *In re L.L.*, 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

#### **Best interests of child.**

##### **— Discretion of court, best interests of child.**

In the case of a contested adoption between two non-parents, trial court did not abuse its discretion in making its best interests determination and concluding that granting prospective adoptive parents' adoption petition would be in the best interests of the children; court did not base its decision on only one factor, but on several, one-year-old twins had been in care of adoptive parents since birth, children had need for continuity of care and caretakers, and there were other adopted children in home of adoptive parents. *In re T.J.L.*, 998 A.2d 853, 2010 D.C. App. LEXIS 407 (2010).

Trial court decision to stay adoption proceeding for six months, rather than dismiss the proceeding, at the show cause hearing was not an abuse of discretion, even though the court concluded at the show cause hearing that it might lack clear and convincing evidence to support a waiver of mother's consent for adoption; there was no statutory requirement that the court dismiss the proceedings if it found that it might lack sufficient evidence to waive mother's consent to adoption, and the adoption statute provided that a court could grant an adoption decree "when it is satisfied" that adoption would be in the best interests of the child. *In re H.B.*, 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

Determination whether child's best interests warrant approval of application for adoption over natural parent's objection is within discre-

tion of trial court; exercise of that discretion, however, must be based upon correct legal principles. D.C. Code 1981, § 16-2353(b). *In re L.L.*, 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

##### **— Factors, best interests of child.**

Trial court did not err in failing to ascertain child's opinion of his own best interests in adoption proceeding, which was being contested by birth mother, where child was less than five years old at the time of the hearing and had limited acquaintance with his biological mother. *In re J.G.*, 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle did not impermissibly treat the religious, educational, and financial backgrounds of the respective families as dispositive factors in its best interests analysis; court's references to the religions of the two pairs of parents was nothing more than a factual observation, and though the court stated that higher level of education and income of aunt and uncle favored placement with aunt and uncle due to coincidence with blood relationship, the court considered the totality of facts in coming to its decision. D.C. Code 1981, §§ 16-309(b), 16-311. *In re J.D.W.*, 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Adoption statute, which provides standards for the consideration of a contested adoption petition, allows trial court to consider any factor which appears relevant under the circumstances to allow the judge to make an informed and rational judgment, free of bias and favor, as to the least detrimental of the available alternatives. D.C. Code 1981, § 16-309(b), (b)(3). *In re D.R.M.*, 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Even though factors of psychological parentage and continuity of care are significant factors in determining the best interests of the child in adoption proceeding, factors of psychological parentage and continuity of care are not of primary importance. *In re Petition of D.I.S.*, 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Psychological parentage and continuity of care are important factors in determining the best interests of the child in adoption proceeding. *In re Petition of D.I.S.*, 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Trial judge properly weighed factors of psychological parentage and continuity of care against other factors in determining whether natural grandmother's adoption of child would be in best interests of the child rather than adoption by child's foster mother. *In re Petition of D.I.S.*, 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).



In adoption proceedings, trial judge should weigh all relevant factors bearing on best interests of the child and should make detailed, written findings of fact and separate conclusions of law on each factor considered. Domestic Relations Rule 52(a). In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Sexual orientation of petitioners to adoption, to the extent relevant, is to be considered under the factors of this section, which address the fitness of those seeking to adopt and the best interests of the child. In re D.S., 123 WLR 1149 (Super. Ct. 1995).

#### — In general.

When an issue affects the future of a minor, the decisive consideration is the best interest of the child. In re E.D.R., 772 A.2d 1156, 2001 D.C. App. LEXIS 113 (2001).

Decisive consideration in any adoption case is the best interests of the child, which is a matter left to the sound discretion of the trial court. D.C. Code 1981, § 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Best interests of child standard applicable in adoption proceeding is flexible and not susceptible to ready definition; it must of necessity contain certain imprecision and elasticity. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

In adoption case, decisive consideration is best interest of the child. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

In adoption cases, as in other disputes affecting future of minor, decisive consideration is best interest of child. In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Statutory best interest of the child standard must be applied in determining whether to grant petition for adoption filed by unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

In deciding an adoption case, trial court may enter a decree when it is satisfied that the adoption will be for the best interests of the prospective adoptee. D.C. Code 1981, § 16-309(b)(3). In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

In an adoption proceeding, the court's primary concern is the best interests of the infant adoptee. In re Adoption of Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

#### Constitutional rights, generally.

Adoption over the natural parent's objection effectively terminates that parent's interest vis-a-vis the child against his or her will, and thus

the natural parent enjoys constitutional protections that may not be overridden without careful examination of factors designed to ascertain the best interests of the child. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

#### Construction and application.

The statutory provision that no final decree in adoption proceedings shall be entered unless child has lived for at least six months with adopting parents, and that an interlocutory decree may become final at the end of six months contemplates placing child in custody of adopting parents at time of interlocutory decree, and indicates intent that child must be within the court's control. D.C. Code 1940, § 16-203. Wathen v. Ugast, 143 F.2d 160, 1944 U.S. App. LEXIS 3034 (1944).

#### Counsel.

Permission for interlocutory appeal of order refusing to appoint counsel and provide expert witness services for indigent birth mother at public expense was improvidently granted in contested adoption proceeding, where equal protection argument advanced by birth mother would have had no bearing on birth mother's case; birth mother's counsel, having accepted pro bono representation, intended to continue representing birth mother regardless of outcome of appeal, and trial judge had before him a report by court's Adoption Resources Branch evaluating background history of all parties to proceeding. U.S.C. Const.Amend. 14; D.C. Code 1981, § 11-721(d). In re J.A.P., 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

#### Due process.

Putative natural father "grasped his opportunity interest" in child, so as to give rise to due process protection in adoption proceeding, where father filed paternity and custody action one week after child's birth, seasonably deposed mother and her father in unsuccessful effort to locate child, and was denied statutory notice of filing of adoption petition. D.C. Code 1981, § 16-310; U.S.C. Const.Amend. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

Notice of final adoption decree to putative natural father three months before expiration of statute of limitations to contest decree did not cure due process violation resulting from failure to provide preadoption notice since burden father faced in seeking relief from judgment was higher than burden which mother and adoption agency would have faced at original adoption proceeding had father been present contesting adoption. D.C. Code 1981, §§ 16-309(e), 16-310; Civil Rule 60(b); Domestic Relations Rule 60(b); U.S. Const.Amend. 5, 14.

In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

Permitting child to be adopted by his great aunt and uncle following termination of mother's parental rights did not violate due process on grounds that trial judge did not adopt least drastic means possible for achieving child's best interest. U.S. Const. Amend. 14; D.C. Code 1981, §§ 16-309, 16-2351, 16-2353, 16-2353(a). S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

### Evidence.

In proceeding to adopt minor child, evidence established that child's welfare would be most secure if it remained with adoptive parents, even though under other circumstances natural mother should receive priority as to custody of her natural offspring. In re Adoption of a Minor Child, 127 F.Supp. 256, 1954 U.S. Dist. LEXIS 2375 (D.D.C.1954).

Evidence supported conclusions that prospective adoptive parents were suitable and that adoption was in the best interest of the child. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

Foster mother, who was white lesbian seeking to adopt African-American boy, failed to show by clear and convincing evidence that natural mother's custody choice, the child's great-aunt, was clearly not in the child's best interest, and, thus, custody would be granted to great-aunt, where although child was attached to foster mother, there was overwhelming evidence that great-aunt would ensure that boy would be in the company of his cousins and sister, and natural mother, who was unable to care for the child because she was mentally ill, had expressed preference for the great-aunt. D.C. Code 1981, § 16-2353(b). In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Clear and convincing evidence supported trial court's finding in adoption proceeding that it was in child's best interest to be adopted and that it would be detrimental to child's interest to deny petition; child had resided with prospective adoptive parents for more than eight years, and there was expert testimony that adoption would be in child's best interest. D.C. Code 1981, § 16-304(e). In re Baby Boy C., 630 A.2d 670, 1993 D.C. App. LEXIS 202 (1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5440, 63 U.S.L.W. 3257 (1994).

Evidence supported finding that it would be in the best interest of child to be adopted by its maternal grandparents after natural father

had shot and killed natural mother. In re Adoption of D., 324 A.2d 200, 1974 D.C. App. LEXIS 258 (1974).

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. D.C. Code §§ 16-301 to 16-304, 16-304(e), 16-307, 16-309(b)(3), 16-312, 19-316. In re J.H., 313 A.2d 874, 1974 D.C. App. LEXIS 344 (1974).

### Examination of adoptees.

Prospective adoptees who have sufficient age and intelligence to understand character and consequences of adoption proceeding should appear for examination by District Court of United States for District of Columbia in order that their interests may be brought before court. D.C. Code Supp. V, T. 15, §§ 1a to 1c. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

### Findings of fact.

Findings of fact and conclusions of law were necessary in order to review dismissal of petition of maternal grandparents for adoption of minor grandchild, with respect to which the trial judge stated only that grandparents had not established the facts to justify the adoption and that withholding of consent by the natural father had not been contrary to the best interests of the child. D.C. Code § 16-304(b)(2)(B), (d, e); D.C. Code SCR, Dom.Rel. Rule 52(a). Petition of C., 314 A.2d 486, 1974 D.C. App. LEXIS 349 (1974).

### In general.

Where petitioners for adoption who had cared for 11-year old child in loco parentis since April 1930, adequately presented what they had done for and would offer child, natural mother showed all that her home would mean to child, natural father unconditionally consented to adoption, board of public welfare made a satisfactory report, child was interviewed for two hours by the court in chambers with parties' consent, and all factors in respect of best interests of child including all facts pertinent to judge's consideration of abandonment and extraordinary cause were tested in a thorough hearing, child's interests were properly presented to the court. In re Adoption of a Minor, 120 F.2d 720, 1941 U.S. App. LEXIS 3531 (1941).

Where competing parties in adoption proceedings are given opportunity for a thorough hearing, and the petition is vigorously advocated and contested, and witnesses are cross-examined, the interests of the adoptee can be fully presented to the court. In re Adoption of



Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

### Judicial notice.

Taking of judicial notice and reliance by trial judge on factual findings and conclusions of law in initial neglect proceeding did not result in miscarriage of justice in consolidated adoption proceeding, absent objection at trial. *S.S. v. D.M.*, 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

### Orders of court.

#### — Final decree, orders of court.

In 1937 statute providing that “entry of final decree” of adoption shall establish relation of natural parent and natural child between adoptor and adoptee for all purposes, quoted words refer to entry of final decree under or in view of Act either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an “entry of final decree” of adoption within statute. D.C. Code 1940, §§ 16-201 to 16-207, 16-204, 16-205. *Hall v. Scarlett*, 188 F.2d 990, 1951 U.S. App. LEXIS 3135 (C.A.D.C. 1951).

Under adoption statute, final decree of adoption terminated former relationship of natural parent and natural child, and on death of adoptors the right of natural mother to custody of child was not revived. D.C. Code 1951, § 16-205. *Cooley v. Washington*, 136 A.2d 583, 1957 D.C. App. LEXIS 319 (Cr.App. 1957).

#### — In general.

If petition for adoption of infant without consent of natural father of infant is granted on statutory ground, decree should so state, and basis for such conclusion, though not necessary to be recited in decree itself, should appear in findings or in some other matter, such as in opinion of court, with adequate evidentiary support in record, and Court of Appeals could not make such determination in first instance. D.C. Code 1940, § 16-202. *In re Adoption of A Minor*, 194 F.2d 325, 1952 U.S. App. LEXIS 2767 (C.A.D.C. 1952).

Where court granted petition for adoption of infant although natural father of infant did not consent to adoption, and trial court made no finding or ruling as to any of the permissive statutory grounds for granting of such petition when natural parent refuses to consent to adoption, decree was not in form or in context which would give it requisite legal basis. D.C. Code 1940, § 16-202. *In re Adoption of A Minor*, 194 F.2d 325, 1952 U.S. App. LEXIS 2767 (C.A.D.C. 1952).

The statutory provision that no final decree in adoption proceedings shall be entered unless child has lived for at least six months with adopting parents, and that an interlocutory

decree may become final at the end of six months contemplates placing child in custody of adopting parents at time of interlocutory decree, and indicates intent that child must be within the court's control. D.C. Code 1940, § 16-203. *Wathen v. Ugast*, 143 F.2d 160, 1944 U.S. App. LEXIS 3034 (1944).

Although order permitting intraracial adoption was labeled “interlocutory” it was appealable as a final order under the doctrine of practical finality, and since foster parents filed appeal within 30 days of denial of their motion for amendment of and additions to findings of fact the appeal was timely. (*Per Ferren, J.*, with one Judge concurring specially.) D.C. Code 1973, §§ 11-721(a)(1, 2), 16-309(c, d); Court of Appeals Rule 4, pt. II(a)(1, 2). *In re Petition of R.M.G.*, 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

### Parent-child relationship.

Child's need for continuity of care and for a timely integration into a stable and permanent home supported adoption, over biological mother's objection, by great aunt, who had been taking care of child since his removal from mother's home, where child had lived with mother for only seven months and mother had made virtually no effort or progress towards reintegrating her son into her home. *In re J.G.*, 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Child's physical, mental, and emotional needs supported adoption, over biological mother's objection, by great aunt, who had been taking care of child since his removal from mother's home; evidence indicated child had been seriously abused in biological mother's home, mother was intellectually limited, lacked parenting skills, contributed none of her earnings to child's support, and child had spent almost his entire life in the care of great-aunt. *In re J.G.*, 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court hearing contested adoption proceeding involving two sets of prospective parents may consider blood relationship as a factor in making the best interests of child determination. D.C. Code 1981, §§ 16-309(b), 16-311. *In re J.D.W.*, 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Trial court did not abuse its discretion in finding that natural grandmother's adoption, rather than adoption by child's foster mother, would be in the best interests of the child where, even though bonding had occurred between foster mother and child and a good home had been provided by foster mother, extensive support group of relatives was available to grandmother, where marital problems in foster family would have had adverse effect on the child, where child, who was of Guyanese/Latino heritage, would have faced trauma in adoles-



cence in searching for her roots if placed with Caucasian foster mother, and where grandmother had greater ability to foster child's sense of her heritage. In re *Petition of D.I.S.*, 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

The court granted the adoption of a child to petitioners, contrary to the statutory preference to which the biological father was entitled, where the court concluded adoption was in the best interests of the child because: (1) denial of the petition to adopt would have subjected the child to psychological harm because the biological father intended to lead the child away from petitioners and encourage him to take on a different cultural identity, resulting in a painful dilemma for the child to choose between two culturally different families; (2) adoption was the only way to make secure the child's legal status in petitioners' family, the only family the child knew, and to remove the dilemma for the child of making the choice himself; and (3) the child resided with the petitioners for more than eight years, and a strongly formed emotional relationship existed between the child, petitioners and petitioners' other son. In re *Baby Boy C.*, 120 WLR 1309 (Super. Ct. 1992).

#### **Powers and duties of court.**

Under statute providing that after considering adoption petition, the consents, and evidence presented in adoption decree may be entered if court is satisfied that adoptee is physically, mentally, and otherwise suitable for adoption and that petitioner is fit and a change will be for best interests of adoptee, primary duty of District Court is to determine the best interests of the infant. D.C. Code 1951, § 16-203. In re *Adoption of a Minor*, 228 F.2d 446, 1955 U.S. App. LEXIS 3692 (C.A.D.C. 1955).

In adoption proceeding, it is function of District Court, not of appellate court, to determine the best interests of the infant. D.C. Code 1940, §§ 16-201 to 16-203. In re *Adoption of a Minor*, 144 F.2d 644, 1944 U.S. App. LEXIS 2900 (1944).

Where jurisdiction of District Court of United States for District of Columbia in adoption proceeding depends solely on petitioner's claim to legal residence in District, such court must take the greatest precautions to insure full representation and protection for interests of all concerned. D.C. Code Supp. V, T. 15, § 1a. *Barnes v. Paanakker*, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

In adoption cases, and in proceedings to terminate parental rights, paramount consideration is the best interest of the child; trial court, as *parens patriae*, has obligation to protect child's welfare. In re *T.W.*, 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Where both families were deemed qualified to adopt child, the trial court in deciding on the

child's best interests could take note of factors which might otherwise be of little or no import. D.C. Code 1981, §§ 16-309(b), 16-311. In re *J.D.W.*, 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

On application to adopt child over objection of parent and motion to terminate parental rights, court's first duty is to protect child from any unwarranted danger of harm. D.C. Code 1981, § 16-2353(b). In re *L.L.*, 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Where future of child is at stake, judge should do her or his best to obtain all information needed to effect judicious disposition, and rigorous application of evidentiary rules is out of place in contested adoption case; judge's independent duty as *parens patriae* to act in child's best interest cannot be effectively carried out if artificial restrictions are placed on scope of his or her inquiry. D.C. Code 1981, § 16-309(b). In re *L.W.*, 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

In assessing best interest of child in adoption case, court's inquiry is fact-specific and practical, not doctrinal, for court must make determination on specific evidence related to that child alone. In re *L.W.*, 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Superior court would not use its equity power to disturb statutory scheme for intestate succession and permit inheritance by one who was neither the natural nor the adopted child of an intestate, under theory of equitable adoption. In re *Hattie Dean Lucas*, 133 WLR 663 (Super. Ct. 2005).

Where birth mothers refused to divulge identity of respective birth fathers of their children, and offered some reason for refusal, court entered interlocutory decrees of adoption pursuant to subsection (d) as in the best interests of the adoptees, despite lack of notice to unnamed birth fathers. In re *Three Adoption Cases*, 118 WLR 645 (Super. Ct. 1990).

#### **Purpose.**

The purpose of adoption act was to improve adoption proceedings in District of Columbia by charging District Court of United States for District of Columbia with affirmative duty to bring interests of adoptees fully before court and to protect adoptees and their interests. D.C. Code Supp. V, T. 15, §§ 1a to 1c. *Barnes v. Paanakker*, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

#### **Questions of law.**

In proceedings for adoption of illegitimate child, whether payments by father were voluntary contributions to support of the child, within meaning of statute providing that consent of father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed volun-

tarily to its support was a question of law. D.C. Code 1940, §§ 16-201, 16-202. In re Adoption of a Minor, 155 F.2d 870, 1946 U.S. App. LEXIS 2294 (1946).

### Race.

In interracial adoption cases, three-step approach articulated in lead opinion in In re R.M.G. and E.M.G. need not be followed, declining to follow In re R.M.G. and E.M.G., 454 A.2d 776. In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Intent to discourage an interracial marriage is not a sustainable rationale for implementing an adoption statute containing race as a criteria, nor is even a well-intentioned effort to protect a child against community prejudice a proper justification of itself for an adoption decision. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Adoption statute does not deny equal protection although it permits a court to take race into account. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amend. 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where there is every indication from trial court analysis that, but for consideration of race, adoption decision might have been different, any determination as to race that is not precisely articulated on a comparative basis will fail to survive strict scrutiny. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

If race is to be a relevant factor in adoption a court cannot properly weigh it either automatically or presumptively, i.e., without regard to evidence, for or against cross racial adoption for to do so would add a constitutionally proscribed racially discriminatory policy to evaluation of the child's best interest. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a factor in adoption, only through detailed, written findings and conclusions will the trial court be able to explain its thinking process with sufficient clarity to assure the data needed for effective scrutiny review. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G.,

454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is relevant in an adoption contest, the trial court must make a three-step evaluation: (1) how each family's race is likely to affect the child's development of a sense of identity, including racial identity; (2) how the families compare in that regard; and (3) how significant the racial differences between the families are when all relevant factors are considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

In evaluating identity factor where race is relevant in an adoption contest the court must evaluate the probable effect of each family's race and related attitudes on the child's sense of belonging in the family and community, the child's self-esteem and confidence and the child's ability to cope with problems outside the family and relevant questions include to what extent the family will expose the child to others of his or her own race and what efforts the family will most likely make to foster the child's sense of identity, including racial and cultural identity and self-esteem. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Fact that race apparently tipped decision in favor of intraracial adoption, i.e., favoring grandparents of the same race as opposed to foster parents of different race, did not of itself suggest a discriminatory result. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Judgment granting intraracial adoption, as opposed to adoption by foster parents of different race, was reversed where race was the deciding factor and trial court made no specific findings as to how race was likely to affect the particular black child growing up, respectively, in families of white foster parents and of black paternal grandparents and did not articulate comparative analysis of the families in their respective abilities to accommodate race and significance of racial differences when all relevant factors were considered together. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

For effective review when race is a critical factor in adoption, the appellate court needs to



understand exactly how the trial court made the judgment as to race that it did: whether as a precisely analyzed determination, based on carefully thought-through comparisons of the parties drawn from record evidence, or a more generalized conclusion that race always favors petitioners of the same race, a judgment reflecting an impermissible intellectual shortcut. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Although race, among other factors, can be relevant in deciding between competing petitions for adoption, since adoption statute expressly incorporates race the statute, as well as the trial court's application thereof, must survive strict scrutiny to comport with equal protection. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const. Amend. 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

While racial difference is a factor to be considered in an adoption, it cannot be a per se basis for refusing to grant an adoption. In re J.H.M., 119 WLR 1209 (Super. Ct. 1991).

#### **Relationship with adoptive parents.**

Record sustained the validity of an adoption decree entered in the District Court in a proceeding wherein petitioners for adoption who had cared for 11-year old child in loco parentis since April 1930, and natural mother were the adverse parties. In re Baby Boy C., 120 WLR 1309 (Super. Ct. 1992).

The quality of the interaction and interrelationship of the child with great aunt, who had been taking care of child since his removal from biological mother's home, supported adoption by great aunt over biological mother's objection, where the quality of interaction between child and his mother after he was removed from the mother's home was favorable but fragmentary. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

In determining whether to grant motion to terminate parental rights and application for adoption over objection of parent, trial court could not disregard fact that child had been living with prospective adoptive parent for more than half of his life, particularly in light of uncontradicted expert testimony that it would be detrimental to remove child from prospective adoptive parent's home. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

It was in best interests of child to terminate father's parental rights and to allow foster mother to adopt child, where child was fully integrated into stable adoptive home, living situation of father was unstable if not chaotic

before child was removed from that environment, foster mother's mental and emotional health were unchallenged, father's emotional health was significantly impaired, father had been convicted of taking indecent liberties with seven-year-old girl and had long criminal history, child's relationship with foster mother was very warm, and placement with father would expose child to continued risks associated with natural mother's cocaine addiction. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

#### **Reports.**

In adoption proceeding, reports from guardian ad litem appointed to represent interest of infant and from Board of Public Welfare, and such other information and advice as might be available, were admissible on issue of best interests of infant. D.C. Code 1940, §§ 16-201 to 16-203. In re Adoption of a Minor, 144 F.2d 644, 1944 U.S. App. LEXIS 2900 (1944).

The report of Board of Public Welfare did not satisfy statutory requirement that interests of adoptee be fully before District Court of United States for District of Columbia, where board's investigation was not authorized by statute to extend to character of natural parent or petitioners, and such matter was a vital issue in instant proceedings. D.C. Code Supp. V, T. 15, §§ 1a to 1c. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

#### **Review.**

Where decree granting petition for adoption of infant daughter of petitioner's wife by her former husband is supported by sufficient fact findings, which evidence supported, and conclusions of law, and recites that natural father's consent to adoption should be dispensed with for extraordinary cause, which constitutes one of statutory grounds, decree should not be set aside by Court of Appeals. D.C. Code 1951, § 16-202. In re Adoption of a Minor, 204 F.2d 55, 1953 U.S. App. LEXIS 2391 (C.A.D.C. 1953).

If petition for adoption of infant without consent of natural father of infant is granted on statutory ground, decree should so state, and basis for such conclusion, though not necessary to be recited in decree itself, should appear in findings or in some other matter, such as in opinion of court, with adequate evidentiary support in record, and Court of Appeals could not make such determination in first instance. D.C. Code 1940, § 16-202. In re Adoption of A Minor, 194 F.2d 325, 1952 U.S. App. LEXIS 2767 (C.A.D.C. 1952).

On appeal from decree which granted petition of present husband of natural mother of infant for adoption of infant, which appeal was brought by natural father of infant, existence of permissive statutory ground for granting peti-



tion without consent of natural father or infant could not be inferred from fact that trial court granted petition. D.C. Code 1940. § 16-202. In re Adoption of A Minor, 194 F.2d 325, 1952 U.S. App. LEXIS 2767 (C.A.D.C. 1952).

Where at time of adoption decree the District Court had not promulgated rules to govern adoption proceedings in accordance with Congress' express authorization, the reviewing court in lieu of such rules was required to give a special independent consideration to the question whether the procedure in the District Court fully protected the interests of the adoptee. In re Adoption of a Minor, 120 F.2d 720, 1941 U.S. App. LEXIS 3531 (1941).

The decision of District Court of United States for District of Columbia that extraordinary cause for dispensing with requirement that father consent to adoption of children by former wife and her subsequent husband did or did not exist, or decision on any other issue relevant to adoption proceedings, was improper, where interests of children were not brought fully before such court by examination of children or appointment of qualified person to represent them. D.C. Code Supp. V, T. 15, §§ 1a to 1c. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

The provision in District Code that any party aggrieved by final order, judgment, or decree of District Court of United States for District of Columbia can appeal to United States Court of Appeals for District of Columbia embraces an appeal by aggrieved party from final order in adoption proceeding. D.C. Code 1929, T. 18, § 26; D.C. Code Supp. V, T. 15, § 1a. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

Whether finding of District Court of United States for District of Columbia, that extraordinary cause did not exist for dispensing with father's consent to adoption, was abuse of discretion would not be decided by United States Court of Appeals for District of Columbia on appeal from orders denying adoption, where District Court's errors in certain procedural matters were sufficiently grave to require that adoption proceedings be remanded. D.C. Code Supp. V, T. 15, § 1b. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

On appeal from decision of District Court of United States for District of Columbia in adoption proceeding, neither failure of counsel to raise on appeal the point whether interests of adoptees were fully before District Court or fact that no decree of adoption was entered relieved United States Court of Appeals for District of Columbia of responsibility to consider such matter, since decision on petition for adoption can properly be made by District Court only after interests of adoptee have been fully brought before District Court. D.C. Code Supp.

V, T. 15, §§ 1a to 1c. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

Trial judge's failure to expressly apply the criteria set forth in statute regarding termination of parental right in his judgment approving adoption of child over mother's objection did not warrant remand given the emphatic character of the judge's findings "beyond a reasonable doubt" rather than the required "clear and convincing evidence" and the compelling evidence that the mother offered no realistic alternative to adoption. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle did not abuse its discretion in denying foster parents' motion to inspect agency reports and aunt and uncle's petition; it did not appear that trial court placed principal reliance on facts which foster parents claimed came from agency reports, and foster parents made no proffer that they presently disputed the veracity of those facts. D.C. Code 1981, §§ 16-304(e), 16-309(b), 16-311. In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Trial court's legal determinations in adoption proceeding are reviewed de novo, whereas findings of fact are reviewed under the clearly erroneous standard. In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

Court of Appeals may reverse a trial court's determination, in adoption proceeding, of where the best interests of the child lie only when the judge has abused his discretion. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

When reviewing best interests of child determination in adoption proceeding, Court of Appeals addresses whether the trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors and no improper factor, and whether the decision is supported by a firm factual foundation in the record. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

In evaluating trial court's exercise of discretion regarding adoption petition, appellate court assesses whether trial court has applied correct burden of proof and then evaluates whether trial court's decision was supported by substantial reasoning drawn from firm factual foundation in the record. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Appellate court reviews trial court's order granting adoption for abuse of discretion, and determines whether trial court exercised its discretion within range of permissible alterna-

tives, based on all the relevant factors and no improper factor. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Without empirical basis of record for evaluating general impact of adoption statute as interpreted to preclude or allow adoption by unmarried couple, Court of Appeals cannot effectively use absurdity and injustice tools for across-the-board interpretation of adoption statute. D.C. Code 1981, §§ 16-302, 16-305, 16-312(a), 49-202. In re M.M.D., 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Remand of motion to terminate parental rights and application for adoption to trial court, which had misapprehended applicable legal principles, for further findings would serve no useful purpose in light of clear weight of the evidence and danger to the child; accordingly, case would be remanded with directions to grant application and motion, notwithstanding rarity with which such relief should be granted by appellate court. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Law of the case doctrine barred Court of Appeals from reconsidering best interest of the child standard previously applied in natural father's appeal from order granting petition for adoption, notwithstanding father's contention that first appeal did not address constitutional claims challenging standard, but considered only issue whether his statutory and procedural due process rights were violated by lack of notice of adoption proceedings; judges who heard first appeal considered and rejected father's constitutional claims on the merits. U.S.C. Const. Amend. 14. In re Baby Boy C., 630 A.2d 670, 1993 D.C. App. LEXIS 202 (1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5440, 63 U.S.L.W. 3257 (1994).

Remand of adoption petition was necessary, where trial court failed to apply best interest standard of adoption statute as interpreted to include presumption in favor of fit natural parent over stranger to child, but instead found that best interest of child warranted adoption due to psychological impact on child from transfer from prospective adoptive parents to natural father. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Clearly erroneous rule was applicable to trial court's findings of fact and conclusions of law in adoption proceeding, even though findings and conclusions were adopted practically verbatim from proposed findings and conclusions submitted by potential adoptive parents and child

placement agency, where minor changes by trial court indicated that findings and conclusions ultimately represented judge's own determinations. (Per Ferren, J., with Chief Judge concurring separately.) H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

The Court of Appeals may reverse a trial court's determination of where the best interests of the child lie, in an adoption case in which the natural mother is withholding consent to the adoption, only when the trial judge has abused his discretion. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Trial judge, in adoption case in which natural mother was withholding consent, adequately addressed critical factors identified in adoption statute, even though judge's analysis did not track, or even mention adoption statute, where, in his oral and written conclusions of law, judge correctly framed central issue as whether the adoption petitioner had shown by clear and convincing evidence that natural mother's consent to adoption was being withheld contrary to best interests of child. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Trial judge's failure, in contested adoption petition, to invoke contested adoption statute when he granted adoption decree was not an abuse of discretion, or a substitution of standards governing termination of parental rights for those governing consideration of adoption petitions, even though some of judge's oral and written findings and conclusions appeared in context of termination of parental rights analysis, where judge's oral and written findings demonstrated that he gave careful consideration to physical and mental suitability of child for adoption and whether the prospective adoptive parent would provide an adequate home and education for the adoptee. D.C. Code 1981, §§ 16-309(b), (b)(1, 2, 4), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

In reviewing trial court's determination of best interests of the child in adoption cases, Court of Appeals will reverse only for an abuse of discretion. In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Where trial court acted within proper scope of its discretion, i.e., range of permissible alternatives, and considered all relevant factors prescribed by the statute and no improper factor, focus of appellate inquiry was limited to whether determination that race factor tipped the scales in favor of intraracial adoption was sufficiently substantial, based on a firm factual foundation of record, to withstand strict equal protection scrutiny and trial court was held accountable for affirmatively justifying the judgment in every material respect. (Per



Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

Where race is a statutory factor in adoption, appellate review of judicial discretion under the statute must be as exacting as equal protection scrutiny of the statute. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 16-305(4, 5), 16-308, 16-309, 16-309(b)(2); U.S. Const.Amends. 5, 14. In re Petition of R.M.G., 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

### **Standard for granting petition.**

In the case of a contested adoption between two nonparents, the ultimate decision on whether granting a petition serves the adoptee's best interests is made by the preponderance of the evidence. D.C. Code 1981, § 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

For purposes of determining whether adoption should have been allowed by foster mother or whether, as mentally ill mother desired, custody should have been granted to great-aunt, trial court should not have disposed of merits of mother's retention of custody of child herself as against merits of prospective adopter's claim, applying a clear and convincing standard, and then weighed great-aunt's custody petition against adoption petition, applying the preponderance of the evidence standard; mother's wishes should not have been placed on equal footing with other factors, and ruling on adoption that effectively would terminate parental rights must be supported by clear and convincing evidence. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

In light of the role of adoption proceedings to determine the best interests of the child, use of the preponderance of the evidence standard is most appropriate. In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

In adoption proceeding, trial court properly applied standard of proof of preponderance of the evidence rather than standard of proof of clear and convincing evidence in determining whether adoption by natural grandmother or adoption by foster mother was in the best interests of the child, especially where child's natural father consented to grandmother's adoption. In re Petition of D.I.S., 494 A.2d 1316, 1985 D.C. App. LEXIS 415 (1985).

Clear and convincing evidence on issue of whether adoption by stepfather was in best interests of children supported trial court's conclusion that adoption petition of stepfather should be granted. D.C. Code § 16-304(e). In re

Petition of J. O. L., 409 A.2d 1073, 1979 D.C. App. LEXIS 526 (1979), vacated by 449 U.S. 989, 101 S. Ct. 523, 66 L. Ed. 2d 286, 1980 U.S. LEXIS 3956, 49 U.S.L.W. 3371 (1980).

### **Unfitness.**

The father of 12 and 14 year old boys was not adequate protector of interests of boys in adoption proceedings instituted by mother and her subsequent husband, where father was naturalized Englishman living in France, and his opportunity for counsel with boys had been limited in recent years, and boys had been in custody of mother and subsequent husband, and father consented conditionally to adoption for a financial consideration. D.C. Code Supp. V, T. 15, §§ 1a to 1c. Barnes v. Paanakker, 111 F.2d 193, 1940 U.S. App. LEXIS 3608 (1940).

### **Withholding of consent.**

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle permissibly focused its decision on birth mother's reasons for initially withholding consent to aunt and uncle; those reasons, which caused mother to "lash out" at aunt and uncle, bore directly on whether the withholding of consent was indeed at the time motivated by and in the best interests of child. D.C. Code 1981, §§ 16-304(e), 16-309(b). In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

### **Witnesses, generally.**

New counsel should have been appointed to represent child in adoption proceeding, where guardian ad litem, who had been appointed as advocate for child, was called as witness for one of the opposing parties. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Error arising when trial judge allowed child's guardian ad litem to serve dual roles as attorney and witness at show cause hearing on adoption petition did not result in miscarriage of justice, where judge did not uncritically adopt lay opinions of guardian ad litem, but instead independently evaluated evidence, weighed options for child, and reached his own conclusion that adoption was in child's best interest. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Where all of interests of adoptee were presented by witnesses who favored and those who opposed adoption and trial court in addition conducted interview with adoptee in chambers, family division did not err in not appointing counsel to represent interests of adoptee. Petition of Douglas, 390 A.2d 1, 1978 D.C. App. LEXIS 398 (1978), writ of certiorari denied by



439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716,  
1978 U.S. LEXIS 4286 (1978).

## § 16-310. Finality of decrees of adoption.

An attempt to invalidate a final decree of adoption by reason of a jurisdictional or procedural defect may not be received by any court of the District, unless regularly filed with the court within one year following the date the final decree became effective.

(Dec. 23, 1963, 77 Stat. 540, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-310. 1973 Ed., § 16-310.

### CASE NOTES

#### ANALYSIS

Equitable tolling.  
Notice of final decree.  
Regularly filed.  
Time of filing.

#### Equitable tolling.

Informal letter by putative father requesting information concerning adoption proceeding did not “equitably toll” one-year statute of limitations for objections to final adoption decrees. D.C. Code 1981, § 16-310. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

#### Notice of final decree.

Trial court’s failure to provide natural mother with notice that adoption petition was granted was a “procedural defect” within meaning of adoption rule and statute providing for a one-year period to challenge final decree of adoption. In re W.E.T., 793 A.2d 471, 2002 D.C. App. LEXIS 52 (2002).

Notice of final adoption decree to putative natural father three months before expiration of statute of limitations to contest decree did not cure due process violation resulting from failure to provide preadoption notice since burden father faced in seeking relief from judgment was higher than burden which mother and adoption agency would have faced at original adoption proceeding had father been present contesting adoption. D.C. Code 1981, §§ 16-309(e), 16-310; Civil Rule 60(b); Domestic Relations Rule 60(b); U.S. Const. Amends. 5, 14. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

#### Regularly filed.

Letter to trial court judge from putative fa-

ther was not notice required to trigger one-year limitation for father to object to adoption order since putative father’s inquiry simply requested information; letter was not motion or pleading that was “regularly filed.” D.C. Code 1981, § 16-310. In re M.N.M., 605 A.2d 921, 1992 D.C. App. LEXIS 82 (1992), writ of certiorari denied by 506 U.S. 1014, 113 S. Ct. 636, 121 L. Ed. 2d 567, 1992 U.S. LEXIS 7657, 61 U.S.L.W. 3401 (1992).

#### Time of filing.

Statute providing that no attempt to invalidate final decree of adoption by reason of any jurisdictional or procedural defect shall be received by any court unless regularly filed within one year following time final decree became effective would preclude any attack, made more than three years thereafter, by mother averring that she had never consented to adoption of child who was born to her, out of wedlock, when she was 16 years old and was committed to Department of Public Welfare, and expressed belief that neither her mother nor putative father had consented, and whose counsel admitted that it was a distinct possibility that adoption would be contested. D.C. Code 1951, §§ 16-216, 16-219, 16-221. In re Wells, 281 F.2d 68, 1960 U.S. App. LEXIS 4533 (C.A.D.C. 1960).

To promote expedited review of claims of ineffective assistance of appointed counsel in proceedings involving termination of parental rights, appellate counsel must raise the issue by motion as soon as possible, rather than waiting for the briefing stage of the appeal; any such motion must be filed within one year following the date the final decree became effective. In re R.E.S., 978 A.2d 182, 2009 D.C. App. LEXIS 351 (2009).

## § 16-311. Sealing and inspection of records and papers.

From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. Such records and papers shall, upon written application to the court, be unsealed and provided to the Child Fatality Review Committee for inspection if the adoptee is deceased and inspection of the records and papers is necessary for the discharge of the Committee's official duties. The clerk of the court shall keep a separate docket for adoption proceedings.

(Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; Oct. 3, 2001, D.C. Law 14-28, § 4620(a), 48 DCR 6981.)

**Prior Codifications.** — 1981 Ed., § 16-311. 1973 Ed., § 16-311.

**Effect of amendments.** — D.C. Law 14-28 inserted "Such records and papers shall, upon written application to the court, be unsealed and provided to the Child Fatality Review Committee for inspection if the adoptee is deceased and inspection of the records and papers is necessary for the discharge of the Committee's official duties." after "promoted and protected."

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 20(a) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 20(a) of Child Fatality Review Committee Establish-

ment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 20(a) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

**Legislative history of Law 14-28.** — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

### CASE NOTES

#### ANALYSIS

Construction and application.

Discretion of court.

In general.

#### Construction and application.

Statute providing that records in adoption proceedings shall be sealed does not bar inspection of adoption records by adult adoptee asserting her own interest in inspection where each of parents concerned, both biological and adoptive, has consented. D.C. Code 1981, § 16-311. In re D.E.D., 672 A.2d 582, 1996 D.C. App. LEXIS 32 (1996).

#### Discretion of court.

Trial court hearing contested adoption proceeding involving foster parents and child's maternal aunt and uncle did not abuse its discretion in denying foster parents' motion to

inspect agency reports and aunt and uncle's petition; it did not appear that trial court placed principal reliance on facts which foster parents claimed came from agency reports, and foster parents made no proffer that they presently disputed the veracity of those facts. D.C. Code 1981, §§ 16-304(e), 16-309(b), 16-311. In re J.D.W., 711 A.2d 826, 1998 D.C. App. LEXIS 101 (1998).

It was not an abuse of discretion for trial court to deny natural father's oral request for access to sealed report on proposed adoption prepared by Social Rehabilitation Administration. D.C. Code § 16-311. In re Adoption of D., 324 A.2d 200, 1974 D.C. App. LEXIS 258 (1974).

Refusal to allow prospective adoptors' attorney access to investigative report in which department of public welfare recommended that petition for adoption be denied because of deterioration in prospective adoptors' marital



relationship and serious personality defects in both of them was not an abuse of discretion where trial judge related to the attorney the findings and the information gathered from persons listed or references by prospective adoptors. D.C. Code § 16-311. In re Adoption of Female Infant, 237 A.2d 468, 1968 D.C. App. LEXIS 119 (App. 1968).

**In general.**

Adult person petitioning for leave to inspect

her adoption records should be given a full evidentiary hearing; though there may at times be social complications and risks to adoptee and natural parents from opening records, that should not foreclose inquiry at the outset, but any opening of records must be done with delicateness and with safeguards in initial approaches to the natural parents. In re C.A.B., 384 A.2d 679, 1978 D.C. App. LEXIS 443 (1978).

## § 16-312. Legal effects of adoption.

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adopter and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adopter. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural parents is the spouse of the adopter, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time.

(Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(b), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-312. 1973 Ed., § 16-312.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-309.

### CASE NOTES

#### ANALYSIS

In general.

Inheritance.

Review.

**In general.**

An adoption following the waiver of a birth parent's consent effectively terminates that parent's interest in the care, custody and con-

trol of her child. In re H.B., 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

An adoption over a biological parent's objection effectively terminates that parent's interest. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

The "cut-off" language of subsection (a) may be properly construed as directory, and need not be given mandatory construction such that rights must be cut off, if such a result would not



be in the best interests of the child. In re L.S., 119 WLR 2249 (Super. Ct. 1991).

Where two women lived together for several years and entered into a ceremony of commitment, one had a child by artificial insemination and the other had a child by adoption, and they submitted adoption petitions, the cut-off provision of subsection (a) was held inappropriate and not applied. In re L.S., 119 WLR 2249 (Super. Ct. 1991).

#### **Inheritance.**

Superior court would not use its equity power to disturb statutory scheme for intestate succession and permit inheritance by one who was neither the natural nor the adopted child of an intestate, under theory of equitable adoption. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

#### **Review.**

An order waiving a birth parent's consent to adoption is not a final order and may not be appealed until the adoption proceedings have been concluded; the reason is that only upon a

final decree of adoption are the "rights and duties" of natural parents terminated. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Birth father could not immediately appeal order waiving his consent to adoption; no order terminating his parental rights had been entered, and, even though trial court later terminated father's visitation rights, father did not appeal that order. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

At least in some circumstances, a parent who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Order waiving birth father's consent to adoption was not appealable as order in nature of injunction; waiver of consent dispensed with need for parental consent to adoption, but it was not injunction. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

### **§ 16-313. Child as including adopted person.**

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective.

(Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-313.

1973 Ed., § 16-313.

#### **CASE NOTES**

##### **ANALYSIS**

Issue and lineal descendants.  
Wills, generally.

##### **Issue and lineal descendants.**

Word "issue", as found in two wills which established testamentary trusts the income from which was payable to mother and her issue, included an adopted child of mother, absent any contrary indication of testators' actual intent. D.C. Code §§ 16-312(a), 16-313. *Johns v. Cobb*, 402 F.2d 636, 1968 U.S. App. LEXIS 5662 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 1087, 89 S. Ct. 876, 21 L. Ed. 2d 781, 1969 U.S. LEXIS 2532 (1969).

Word "lineal descendants" as found in will which established testamentary trust the net income from which was payable to daughter and upon daughter's death to daughter's lineal descendants, included adopted children of

daughter's son, absent evidence of testator's actual intent to discriminate against adopted children or other reasonable basis for excluding adopted children from sharing as lineal descendants of testator's daughter. *Read v. Legg*, 493 A.2d 1013, 1985 D.C. App. LEXIS 403 (1985).

Although partial summary judgment which addressed only construction of the term "lineal descendants" in testamentary trust was a partial adjudication insofar as trial court did not construe the term "issue" in the inter vivos trusts, it was clear from trial court's construction of "lineal descendants" that it would construe "issue" the same way, and thus Court of Appeals would review the matter. *Read v. Legg*, 493 A.2d 1013, 1985 D.C. App. LEXIS 403 (1985).

##### **Wills, generally.**

Where will contained bequest to named home for unwed mothers, provided that, should tes-

tator's children die without descendants, entire corpus of trust would go to home for orphans or aged and, if no such home existed in Washington, directed that one be constructed with estate's funds and named after testator's wife, the will evidenced such deep and abiding concern of testator for homeless people and his obvious wish to alleviate their lot, if needs of his immediate family disappeared, that will would be construed to include child adopted by testator's son subsequent to testator's death as son's "child" who was entitled to take under the will. D.C. Code §§ 11-501, 16-312(a), 16-313, 16-315; D.C. Code 1940, § 16-205 (repealed). *Lipscomb v. District Nat'l Bank*, 631 F.2d 1003, 1980 U.S. App. LEXIS 14611 (C.A.D.C. 1980).

The natural parent's future obligation to continue to pay child support following child's adoption is extinguished, but the support obligation that accrued during parent-child relationship prior to the child's adoption remains valid even where it has not been reduced to judgment. Even though the adoption terminates any future legal relationship, it does not affect the support obligation that accrued during the tenure of the previously existing parent-child relationship. The obligation of the natural father continues "until the duty of support expires, whether due to the child reaching the age of majority, adoption, or some other legal termination of that duty." *McAllister v. Jennings*, 118 WLR 1305 (Super. Ct. 1990).

## § 16-314. Birth certificates.

(a) Upon the issuance of a final decree of adoption, an adoption form shall be sent to the Registrar pursuant to the Vital Records Act of 1981. Unless otherwise requested in the petition by the adopters, the Registrar shall cause to be made a new record of the birth in the new name with the names of the adopters and shall then cause the original birth certificate and the order of the Court to be sealed and filed. The sealed package may be opened only by order of the Court or by the Registrar to properly administer the Vital Records Act of 1981.

(b) If the adoption occurred outside the District either before or after August 25, 1937, a new certificate of birth shall be made pursuant to section 11 of the Vital Records Act of 1981. The Registrar shall seal the original birth certificate. The sealed original birth certificate may be opened only by order of a court of competent jurisdiction or by the Registrar to properly administer the Vital Records Act of 1981.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(c-1) If the birth of the adoptee occurred outside of the United States, a new certificate of birth shall be made pursuant to section 11 of the Vital Records Act of 1981.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Mayor shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court.

(Dec. 23, 1963, 77 Stat. 541, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(a)(2); Oct. 8, 1981, D.C. Law 4-34, § 29(f), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(e), 35 DCR 147; May 21, 1992, D.C. Law 9-101, § 2, 39 DCR 2146.)



**Cross references.** — New birth certificates, see § 7-210.

**Prior Codifications.** — 1981 Ed., § 16-314. 1973 Ed., § 16-314.

**Legislative history of Law 4-34.** — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 16-309.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-301.

**Legislative history of Law 9-101.** — Law 9-101, the “Vital Records Adoptive Birth Registration Amendment Act of 1992,” was intro-

duced in Council and assigned Bill No. 9-192, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-173 and transmitted to both Houses of Congress for its review. D.C. Law 9-101 became effective on May 21, 1992.

**References in text.** — The “Vital Records Act of 1981,” referred to throughout subsections (a), (b), and (c-1), is D.C. Law 4-34. Section 11 of the Act is codified at § 7-210.

## CASE NOTES

### ANALYSIS

Burden of proof.  
In general.

#### Burden of proof.

Preponderance of evidence standard governed adoptive parents’ motion to change date of birth on child’s foreign birth certificate to date six months later than date listed; there was no statute describing burden of proof needed to change person’s birth date, change would allow child to receive better medical care, start school at appropriate age, and allow her to develop along side children her own age, and these consequences would not negatively affect rights of child, her parents, or government. In re E.D.R., 772 A.2d 1156, 2001 D.C. App. LEXIS 113 (2001).

#### In general.

Adoptive parents who sought to change date

of birth on child’s Chinese birth certificate to date six months later than date listed showed by preponderance of evidence that latter date was more likely correct; child’s primary care physicians concluded with reasonable scientific certainty that she was born approximately six months later than listed date, one physician stated that foreign birth certificates of abandoned children were often incorrect, parents offered sworn testimony that workers at orphanage from which they adopted child believed that she was born six months later than listed date, and only contrary evidence in record was birth certificate, which was questionable on its face and discredited by other competent evidence. In re E.D.R., 772 A.2d 1156, 2001 D.C. App. LEXIS 113 (2001).

## § 16-315. Prior proceedings.

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954.

(Dec. 23, 1963, 77 Stat. 542, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-315. 1973 Ed., § 16-315.

## § 16-316. Appointment and compensation of counsel; guardian ad litem.

(a) When a petition for adoption has been filed and there has been no termination or relinquishment of parental rights with respect to the proposed adoptee or consent to the proposed adoption by a parent or guardian whose consent is required under [section 16-304], the Court may appoint an attorney to represent such parent or guardian in the adoption proceeding if the individual is financially unable to obtain adequate representation.



(b) The Court may appoint a guardian ad litem who is an attorney to represent the child in an adoption proceeding. The guardian ad litem shall in general be charged with the representation of the child's best interest.

(c) An attorney appointed pursuant to subsection (a) or (b) of this section shall be compensated in accordance with [section 16-2326.01], except that compensation in the adoption case shall be subject to the limitation set forth in [section 16-2326.01(b)(2)].

(Jan. 23, 2004, Pub. L. 108-199, § 435, 118 Stat. 141.)

### **§ 16-317. Recognition of foreign adoptions and elective petitions for District adoption.**

(a)(1) A final judgment of adoption granted by a judicial, administrative, or executive body of a jurisdiction or country other than the United States shall have the same force and effect in the District as that given to a judgment of adoption entered by the Superior Court of the District of Columbia, without additional proceedings or documentation if the:

(A) Adopting parent is a resident of the District of Columbia; and

(B) Validity of the foreign adoption has been verified by the granting of an IR-3 immigrant visa, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

(2) The foreign adoption that meets the requirement of paragraph (1) of this subsection shall be considered final under the laws of the District of Columbia and, notwithstanding any other provision of law to the contrary, no further petition for an adoption decree shall be required in the Superior Court of the District of Columbia.

(3) The Department of Health shall issue a birth certificate for the child upon:

(A) Request by the adoptive parent;

(B) Presentation of evidence that the adoptive parent is a resident of the District of Columbia; and

(C) Presentation of evidence that the child was granted an IR-3 immigrant visa, or a successor immigrant visa, by the United States Citizenship and Immigration Services.

(b)(1) Notwithstanding subsection (a) of this section, an adoptive parent may elect to file a petition for a District adoption decree with the Superior Court of the District of Columbia.

(2) If the foreign adoption meets the requirements of subsection (a) of this section, notwithstanding any other provision of law to the contrary, the court shall issue:

(A) A finding of fact on the foreign adoption, including the:

(i) Name of the adoptive parent;

(ii) Name or names of the child;

(iii) Reported birth date of the child;

(iv) Country of the child's birth;

(v) Country and the date of the foreign adoption; and

(vi) Date and issuance of an IR-3 immigrant visa, or a successor

immigrant visa, for the child by the United States Citizenship and Immigration Services; and

(B) An adoption decree to the petitioner.

(3) A petition for a District adoption decree pursuant to this subsection may be combined with a petition for a name change.

(4) A petition for an adoption decree issued pursuant to this subsection shall be placed on an expedited calendar to ensure minimal expense of time and money to the petitioning party in attaining a adoption decree.

(Sept. 24, 2010, D.C. Law 18-230, § 401(b), 57 DCR 6951.)

**Legislative history of Law 18-230.** — For Law 18-230, see notes following § 16-301.

## CHAPTER 4. SURROGATE PARENTING CONTRACTS.

Sec.  
16-401. Definitions.

Sec.  
16-402. Prohibitions and penalties.

### § 16-401. Definitions.

For the purposes of this chapter, the term:

(1) "Artificial insemination" means the process by which a man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by sexual intercourse, under the supervision of a physician.

(2) "District" means the District of Columbia.

(3) "In vitro fertilization" means a procedure in which an ovum is surgically removed from a genetic mother's ovary and fertilized with the sperm of the genetic father in a laboratory procedure, with the resulting embryo implanted in the uterus of a birth mother.

(4) "Surrogate parenting contract" means any agreement, oral or written, in which:

(A) A woman agrees either to be artificially inseminated with the sperm of a man who is not her husband, or to be impregnated with an embryo that is the product of an ovum fertilization with the sperm of a man who is not her husband; and

(B) A woman agrees to, or intends to, relinquish all parental rights and responsibilities and to consent to the adoption of a child born as a result of insemination or in vitro fertilization as provided in this chapter.

(Mar. 17, 1993, D.C. Law 9-219, § 2, 40 DCR 582; Apr. 9, 1997, D.C. Law 11-255, § 18(a), 44 DCR 1271.)

**Prior Codifications.** — 1981 Ed., § 16-401.

**Legislative history of Law 9-219.** — Law 9-219, the "Surrogate Parenting Contracts Act of 1992," was introduced in Council and assigned Bill No. 9-66, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 4, 1993, it was assigned Act No. 9-350 and transmitted to both Houses of Congress for its review. D.C. Law 9-219 became effective on March 17, 1993.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

### § 16-402. Prohibitions and penalties.

(a) Surrogate parenting contracts are prohibited and rendered unenforceable in the District.

(b) Any person or entity who or which is involved in, or induces, arranges, or otherwise assists in the formation of a surrogate parenting contract for a fee, compensation, or other remuneration, or otherwise violates this section, shall be subject to a civil penalty not to exceed \$10,000 or imprisonment for not more than 1 year, or both.



(Mar. 17, 1993, D.C. Law 9-219, § 2, 40 DCR 582; Apr. 9, 1997, D.C. Law 11-255, § 18(b), 44 DCR 1271.)

**Prior Codifications.** — 1981 Ed., § 16-402.  
**Legislative history of Law 9-219.** — For legislative history of D.C. Law 9-219, see Historical and Statutory Notes following § 16-401.

**Legislative history of Law 11-255.** — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-401.

### CASE NOTES

**Construction and application.**

Although surrogate parenting contracts are illegal in the District of Columbia as of March 17, 1993, where the filing of petitions predated

that date, this policy played no part in a decision based entirely on jurisdictional considerations. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

## CHAPTER 5. ATTACHMENT AND GARNISHMENT.

### *Subchapter I. Attachment and Garnishment Generally*

- Sec.
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- 16-531. Attachment dockets; index of attachments.
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### *Subchapter II. Attachment and Garnishment After Judgment in Aid of Execution*

- 16-541. Definition and applicability.
- 16-542. Issuance of attachment after judgment; costs.
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- 16-549. Attachment of money or property in hands of executor or administrator.
- 16-550. Preservation of property; sale.
- 16-551. Defending against the attachment; trial of issues.
- 16-552. Interrogatories to garnishee; oral examination.
- 16-553. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.
- 16-554. Claims to attached property.
- 16-555. Condemnation and sale of property; proceeds of sale under interlocutory order.
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### *Subchapter III. Attachment and Garnishment of Wages, etc.*

- 16-571. Definitions.
- 16-571.01. Enforcement of support orders by attachment or garnishment.
- 16-572. Attachment of wages; percentage limitations; priority of attachments.
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16-581.	Rules of procedure.	16-584.	No discharge from employment for garnishment.

*Subchapter I. Attachment and Garnishment Generally.*

**§ 16-501. Attachment before judgment; affidavit and bond.**

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the Superior Court of the District of Columbia, for the recovery of:

- (1) specific personal property;
- (2) a debt; or
- (3) damages for the breach of a contract, express or implied.

(b) In an action specified by subsection (a) of this section, the plaintiff, his agent, or attorney, may file an affidavit as provided by subsections (c) and (d) of this section either at the commencement of the action or pending the action.

(c) The affidavit shall comply with the following requirements:

- (1) show the grounds of plaintiff's claim;
- (2) set forth that plaintiff has a just right to recover what is claimed in his complaint;
- (3) where the action is to recover specific personal property, state the nature and, according to affiant's belief, the value of the property and the probable amount of damages to which plaintiff is entitled for the detention thereof;
- (4) where the action is to recover a debt, state the amount thereof; and
- (5) where the action is to recover damages for breach of a contract set out, specifically and in detail, the breach complained of and the actual damage resulting therefrom.

(d) The affidavit shall also state one of the following facts with respect to defendant:

- (1) defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months;
- (2) he evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District;
- (3) he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him;
- (4) he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or
- (5) he fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

(e) Before a writ of attachment and garnishment is issued, the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may



sustain by reason of the wrongful suing out of the attachment; except that in any case in which the plaintiff states in his affidavit that the value of specified property to be levied upon is less than the amount of his claim, the court may set the amount of such bond in an amount twice the value of the property being attached, and, notwithstanding the provisions of subsection (f) of this section, only the property so specified shall be levied upon; provided, that the United States marshal may, in his discretion, when levying upon such property, have the same appraised by an independent appraiser retained by the marshal at the expense of the plaintiff. Any such appraisal shall be made at the time the marshal levies upon the property, and the appraiser shall accompany him for such purpose. If such appraisal has been made, then only such property as may have a value not exceeding one-half of the amount of the bond shall be attached. In the event the appraised value of the property shall be more than one-half of the amount of the bond, the marshal may refuse to execute the writ unless and until the amount of the bond is increased so as to be at least twice the value of the property to be attached.

(f) If the plaintiff files an affidavit and bond as provided by this section, the clerk shall issue a writ of attachment and garnishment, to be levied upon as much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff.

(Dec. 23, 1963, 77 Stat. 543, Pub. L. 88-241, § 1; Aug. 6, 1965, 79 Stat. 447, Pub. L. 89-113, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(1); Mar. 24, 1998, D.C. Law 12-81, § 10(c), 45 DCR 745.)

**Cross references.** — Judgments and decrees, enforcement procedures, see § 15-320.

Fraudulent conveyances, remedies of creditors, see § 28-3107.

Goods covered by negotiable document, attachment, see § 28-7-602.

Insurance policy proceeds, attachment, see §§ 31-4716.01 and 31-4717.

Landlord's lien, enforcement by attachment, see § 42-3214.

Teacher retirement annuities, attachment, see § 38-2001.17.

Unemployment compensation benefits, attachment, see § 51-118.

**Prior Codifications.** — 1981 Ed., § 16-501. 1973 Ed., § 16-501.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

## CASE NOTES

### ANALYSIS

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Waiver.

### **Affidavit, generally.**

Attachment affidavit fully complies with statute, where affidavit states ultimate facts substantially in terms of statute, without stating in connection therewith probative facts which may be necessary to be shown in case of traverse. D.C. Code 1961, §§ 16-501(c)(1), (d) (1, 4). *Washington Bldg. Services, Inc. v. United Janitorial Services, Inc.*, 352 F.2d 678, 1965 U.S. App. LEXIS 4828 (C.A.D.C. 1965).

Requirement that party seeking attachment before judgment must file an affidavit showing grounds of claim and setting forth that he has a just right to recover that which is claimed is not complied with by statement of a conclusion, but affidavit must state facts out of which claim arises and method of computing amount said to be due must be set forth in detail. D.C. Code 1951, § 16-301. *Petroni v. Bass*, 186 F.Supp. 759, 1960 U.S. Dist. LEXIS 3469 (D.D.C.1960).

In action for debt for work, labor, and material furnished by plaintiff to defendants in repair and improvement of building, affidavit of plaintiff, who sought remedy of attachment before judgment, that plaintiff had a just right to recover on such cause of action did not sufficiently allege details of the claim, and, therefore, it was not sufficient to warrant such attachment. D.C. Code 1951, § 16-301. *Petroni v. Bass*, 186 F.Supp. 759, 1960 U.S. Dist. LEXIS 3469 (D.D.C.1960).

Affidavit which was filed after motion to quash attachment and which stated that the defendant was foreign corporation did not cure defect in original affidavit on which attachment before judgment was issued and which contained no averment that defendant was foreign corporation. D.C. Code 1961, § 16-301. *Graham Associates, Inc. v. Fell*, 192 A.2d 129, 1963 D.C. App. LEXIS 249 (App. 1963).

Affidavit is basis for issuing attachment before judgment and cannot be supplied after the attachment has been issued. D.C. Code 1961, § 16-301. *Graham Associates, Inc. v. Fell*, 192 A.2d 129, 1963 D.C. App. LEXIS 249 (App. 1963).

Affidavit preliminary to attachment before judgment, which stated the grounds for plaintiff's claim, a just right to recover, a prescribed type of action, and that defendant was a non-resident, was sufficient. D.C. Code 1951, § 16-301. *Morfessis v. Thomas*, 91 A.2d 833, 1952 D.C. App. LEXIS 221 (Cr.App. 1952).

Where trial court had erroneously held that basic affidavit in attachment action was sufficient, opinion reversing trial court would be modified by providing for remand for further proceedings. D.C. Code 1940, § 16-301. *Rieffer*

*v. Home Indem. Co.*, 62 A.2d 371, 1948 D.C. App. LEXIS 224 (Cr.App. 1948).

Affidavit in attachment before judgment required need not employ the precise language of statute, but words must be sufficiently similar to those of statute to allow drawing of conclusion which is called for by the exact language of the statute. D.C. Code 1940, § 16-301. *Rieffer v. Home Indem. Co.*, 61 A.2d 26, 1948 D.C. App. LEXIS 175 (Cr.App. 1948).

Affidavit in support of attachment before judgment alleging that defendant left the District of Columbia at a time shown by affidavit to be within six months before filing of affidavit, that defendant's present whereabouts were unknown, and that defendant had temporarily withdrawn himself from district, was fatally defective for not alleging that defendant was evading the service of ordinary process by his withdrawal. D.C. Code 1940, § 16-301. *Rieffer v. Home Indem. Co.*, 61 A.2d 26, 1948 D.C. App. LEXIS 175 (Cr.App. 1948).

### **Authority and discretion of court.**

Upon determining that doctrine of *forum non conveniens* was applicable, trial court nonetheless had discretion to maintain plaintiff's pre-trial attachment of property within jurisdiction pending of outcome of foreign litigation. *Barclays Bank, S.A. v. Tsakos*, 543 A.2d 802, 1988 D.C. App. LEXIS 90 (1988).

Neither traditional doctrine of *supersedeas* nor more restrictive philosophy reflected in related general statutory attachment procedures mandate limitation of divorce court's exercise of distinct and supplemental authority to enforce any order relating to divorce by attachment and by sequestration of husband's property. D.C. Code §§ 16-501 et seq., 16-911; D.C. Code SCR, Civil Rule 62-I. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

### **Bond, generally.**

Filing of a proper attachment bond is not jurisdictional. D.C. Code 1973, § 16-501(e). *Metro Rentals, Inc. v. Wagner*, 435 A.2d 1072, 1981 D.C. App. LEXIS 374 (1981).

Generally, purpose of requiring attachment bond is to provide security on which recovery by attachment debtors may be held in event of improper use of attachment or when damages are sustained by reason of attachment. D.C. Code 1973, § 16-501(e). *Metro Rentals, Inc. v. Wagner*, 435 A.2d 1072, 1981 D.C. App. LEXIS 374 (1981).

If creditor claiming priority of its judgment lien over that of garnishor under writ of attachment was unsatisfied with amount of security provided by means of attachment bond, its remedy was to first pursue application under statute authorizing application for order requiring additional bond, and to thereafter move



to quash in event of garnishor's failure to comply with any order of court. D.C. Code 1973, §§ 16-501(e), 16-505. *Metro Rentals, Inc. v. Wagner*, 435 A.2d 1072, 1981 D.C. App. LEXIS 374 (1981).

Where it was not claimed that writ of attachment was insufficient or garnishor's claim was unfounded, nor was it contended that garnishor had any fraudulent intent in filing motion to waive attachment bond, and it was not once contended that attachment bond was insufficient to protect interests of attachment debtor, denial of motion to quash bond was not error, notwithstanding that bond was not in twice the amount of garnishor's claim before attachment writ was issued, as required by statute. D.C. Code 1973, § 16-501(e). *Metro Rentals, Inc. v. Wagner*, 435 A.2d 1072, 1981 D.C. App. LEXIS 374 (1981).

### **Breach of lease.**

Where landlord sued for breach of lease agreement to deliver premises in same order in which they were received, and charged that tenant had damaged premises, in breach of agreement, claim was for the recovery of a "debt, or damages for breach of contract" within attachment statute. D.C. Code 1940, § 16-301. *Fink v. Katz*, 68 A.2d 813, 1949 D.C. App. LEXIS 266 (Cr.App. 1949).

### **Construction and application.**

The provisions of District of Columbia Code regarding attachment and garnishment are applicable in municipal court. D.C. Code 1940, §§ 11-733, 16-301, 16-312, 16-313, 16-333. *Frank v. Malone*, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

In action for misappropriation of trade secret and breach of fiduciary duty brought pursuant to District of Columbia law, plaintiff was not entitled to pre-judgment writ of attachment to seize video tracking system which was subject of suit where he failed to comply with statutory requirements for affidavit setting forth grounds for claim and did not file requisite bond with clerk of court. *Deegan v. Strategic Azimuth LLC*, 768 F.Supp.2d 107, 2011 U.S. Dist. LEXIS 22439 (2011).

Remedy of attachment before judgment is purely statutory, is in derogation of the common law, and is a very drastic proceeding, and, therefore, statute permitting such an attachment should not receive a liberal construction, and strict compliance therewith should be required. D.C. Code 1951, § 16-301. *Petroni v. Bass*, 186 F.Supp. 759, 1960 U.S. Dist. LEXIS 3469 (D.D.C.1960).

Because a writ of attachment before judgment is a harsh and drastic remedy, strict compliance with procedures established by statute is required. D.C. Code §§ 16-501 et seq. *Jack Development, Inc. v. Howard Eales, Inc.*,

388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

District of Columbia Code providing that in any action at law for recovery of debt clerk shall issue writ of attachment if plaintiff files affidavit showing that defendant is not a resident of the District is a general statute and applies to suits in the United States District Court as well as the Municipal Court for the District of Columbia. D.C. Code 1940, § 16-301. *Rice v. Salmier*, 86 A.2d 175, 1952 D.C. App. LEXIS 129 (Cr.App. 1952).

The attachment statute should be strictly construed. D.C. Code 1940, § 16-301. *Rieffer v. Home Indem. Co.*, 61 A.2d 26, 1948 D.C. App. LEXIS 175 (Cr.App. 1948).

### **Damages by attachment.**

A defendant in whose favor a judgment had been rendered, as an alternative to an independent action could file a motion in the case demanding judgment against plaintiff and his surety for damages alleged to have been sustained by attachment of defendant's funds, but assertion of claim in such manner did not disable plaintiff from utilizing defensive rights available to him were an independent action filed. D.C. Code 1961, §§ 16-301, 16-501, 28-2401, 28-2403. *Schmidt v. Smith*, 344 F.2d 168, 1965 U.S. App. LEXIS 6663 (C.A.D.C. 1965).

While rule 73(f) was not available as a means of serving surety on attachment bond on defendant's motion for judgment against plaintiff and surety for damages sustained by the attachment, the ability of defendant to make service upon surety was not thereby necessarily foreclosed. D.C. Code 1961, §§ 16-301, 16-501, 28-2401, 28-2403; Fed.Rules Civ.Proc. rule 73(f), 18 U.S.C. *Schmidt v. Smith*, 344 F.2d 168, 1965 U.S. App. LEXIS 6663 (C.A.D.C. 1965).

District Court may adopt reasonable rules and practices governing assertion of a claim by defendant for damages arising from wrongful attachment, and time within which it may be so asserted may be limited by rules so as to avoid holding original case open unduly long. D.C. Code 1961, §§ 16-301, 16-501, 28-2401, 28-2403. *Schmidt v. Smith*, 344 F.2d 168, 1965 U.S. App. LEXIS 6663 (C.A.D.C. 1965).

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. D.C. Code 1951, §§ 16-301, 16-311, 28-2401, 28-2403, 28-2404. *Davis v.*



Peerless Ins. Co., 255 F.2d 534, 1958 U.S. App. LEXIS 4228 (C.A.D.C. 1958).

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. D.C. Code 1951, §§ 16-301, 28-2403. *Davis v. Peerless Ins. Co.*, 255 F.2d 534, 1958 U.S. App. LEXIS 4228 (C.A.D.C. 1958).

#### **Discharge of sureties.**

It was error to release surety from liability on bond executed to obtain a release of attachment of property of third-party defendant by defendant because attachment affidavit was allegedly defective, where judgment was rendered for plaintiff against defendant and for defendant against third-party defendant for identical sums, and judgment contained paragraph declaring that attachment was void because allegation in affidavit was mere conclusion and referring cause to auditor to take proof of damages sustained by third-party defendant by reason of attachment and to report thereon to court. D.C. Code 1961, §§ 16-501(c, d), 16-506. *Washington Bldg. Services, Inc. v. United Janitorial Services, Inc.*, 352 F.2d 678, 1965 U.S. App. LEXIS 4828 (C.A.D.C. 1965).

#### **Divorce.**

In suit by divorced wife of trust beneficiary to establish interest in trust fund wife could not recover fund due as alimony or for the benefit of creditors, in absence of personal service on beneficiary or an attachment of his equitable interest in fund after execution of bond. D.C. Code 1940, § 16-301. *Buchanan v. National Sav. & Trust Co.*, 146 F.2d 13, 1944 U.S. App. LEXIS 2221 (1944).

Where testator created trusts of which his son was beneficiary but will disclosed intention to provide for grandchildren out of trust incomes, any provision which court might make for divorced wife of beneficiary, in absence of personal service on beneficiary or attachment of beneficiary's interest, was required to be based on the right of child of beneficiary to be protected, against want and inconvenience, under the trusts created by the will, but the child was to be awarded sufficient funds to meet his moral obligations toward his mother. D.C. Code 1940, § 16-301. *Buchanan v. National Sav. & Trust Co.*, 146 F.2d 13, 1944 U.S. App. LEXIS 2221 (1944).

#### **Entry of judgment.**

In action in municipal court of District of Columbia wherein writ of attachment is directed to an executor, in connection with an action against a third party who claims an interest in the estate, the interest of other persons in the estate and the exclusive jurisdiction of district court in probate proceedings are fully protected by statutory provision that, if

executor is in doubt whether defendant's share of estate will prove sufficient to pay plaintiff's debt, no judgment shall be entered against the executor until passage by probate court of his final or other account showing money or property in his hands to which defendant is entitled. D.C. Code 1940, §§ 11-703, 11-733, 16-301, 16-312, 16-313, 16-333, 20-501. *Frank v. Malone*, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

Plaintiff who had settled suit years earlier and claimed right to additional payments under settlement agreement was not entitled to a writ of garnishment on funds in defendant's bank account; federal rule and District of Columbia statute governed provisional remedies prior to the entry of a judgment, and no judgment had been entered in favor of plaintiff. *Crump v. Bank of Am.*, 235 F.R.D. 113, 2006 U.S. Dist. LEXIS 17067 (2006).

#### **Failure to answer writ.**

A corporate garnishee's failure to answer a writ of attachment served upon its registered agent may prove fatal if a judgment of condemnation is subsequently sought and entered against it on behalf of the judgment creditor. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

#### **Fraud.**

Evidence sustained finding that fraud relied on as basis for attachment of automobile had not been proved and that the attachment should be quashed. D.C. Code 1940, §§ 16-301, 16-307. *Davis v. Trumbull*, 61 A.2d 622, 1948 D.C. App. LEXIS 196 (Cr.App. 1948).

#### **In general.**

Attachment and garnishment exists only by statute and it is the statute that determines the extent, nature and scope of the process. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Attachment guarantees judgment creditor's security while significantly reducing potentiality for liability due to wrongful execution. D.C. Code § 16-501. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Fact that plaintiff may not prevail when case comes to trial does not mean he had no right of attachment before judgment. D.C. Code 1951, § 16-301. *Morfessis v. Thomas*, 91 A.2d 833, 1952 D.C. App. LEXIS 221 (Cr.App. 1952).

#### **Jurisdiction.**

Under District of Columbia Code regarding attachment and garnishment and giving the municipal court exclusive jurisdiction over various classes of actions, including proceedings by attachment that involve \$1,000 or less, in action for \$490.10 and interest on foreign judg-

ment against nonresident, municipal court had jurisdiction to issue writs of attachment and notices of garnishment before judgment directed to executor of estate in which the nonresident claimed an interest and to bank in which estate funds had been deposited. D.C. Code 1940, §§ 11-703, 16-301, 16-312, 16-313, 16-333. *Frank v. Malone*, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

The District Court for District of Columbia has exclusive jurisdiction of suits against an executor on claims against the estate, but an attachment or garnishment directed to an executor, in connection with an action against a third party who claims an interest in the estate, is not a "suit against executor" within jurisdiction of district court. D.C. Code 1940, §§ 11-703, 16-301, 16-312, 16-313, 16-333, 20-501. *Frank v. Malone*, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

By virtue of foreign corporation's prejudgment attachment of nonresidents' apartment, trial court had quasi in rem jurisdiction for limited purpose of maintaining attachment pending outcome of litigation in another forum; allegation was made of nonresidents' intended effective removal of property by way of sale and nonavailability of assets elsewhere, and nonresidents had contacts within trial court's jurisdiction by operating business venture and in fact living in apartment over two-year period. *Barclays Bank, S.A. v. Tsakos*, 543 A.2d 802, 1988 D.C. App. LEXIS 90 (1988).

### **Mootness.**

Debtor's claim that writ of attachment failed to meet statutory requirements was not moot, though attached property had been returned to debtor; debtor claimed that property, which included scenery and props she had been using in theater production at time of attachment, was more valuable when attached than it was seven years later when it could not be sold and was returned to her, and garnishee's claim against debtor for expenses incurred in responding to writ could be affected if writ had been improperly issued. D.C. Code 1981, §§ 16-501(d)(1, 3), 16-509. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

### **Nonresidents.**

#### **— Burden of proof, nonresidents.**

To sustain writ of attachment, plaintiff had burden of proving that defendant was a nonresident. D.C. Code 1940, § 16-301. *D'Elia & Marks Co. v. Lyon*, 31 A.2d 647, 1943 D.C. App. LEXIS 213 (Cr.App. 1943).

#### **— Due process, nonresidents.**

Where wage earner whose wages were attached before judgment was nonresident of jurisdiction issuing attachment, this was "un-

usual condition" within United States Supreme Court ruling that statute which was not narrowly drawn to meet unusual condition was violative of due process as applied to resident wage earner. U.S. Const. Amend. 14; D.C. Code § 16-501 et seq. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

#### **— In general.**

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and he possessed a vested reversion and in May, 1960, he would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who was personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. D.C. Code 1951, §§ 13-108, 16-301. *King v. Fay*, 169 F.Supp. 934, 1958 U.S. Dist. LEXIS 3303 (D.D.C.1958).

Corporation, which had an office in the District of Columbia, was subject in the District of Columbia to garnishment of credits in its hands belonging to an employee, who was a resident of Maryland, who performed his work in Maryland, and whose wages were payable in Maryland. D.C. Code 1951, § 16-301. *Marvins Credit, Inc. v. General Motors Corp.*, 119 A.2d 447, 1956 D.C. App. LEXIS 169 (Cr.App. 1956).

For purposes of attachment before judgment on ground that defendant is a nonresident, residence is the test, and the fact that a defendant had an established office in the District of Columbia and presumably was available for personal service was not material. D.C. Code 1951, § 16-301. *National Brick & Supply Co. v. Bradshaw*, 91 A.2d 838, 1952 D.C. App. LEXIS 222 (Cr.App. 1952).

In action by nonresident plaintiff to recover debt wherein nonresident defendant claimed that situs of debt was in Maryland but made no affidavit and submitted no proof in support thereof, Municipal Court for the District of Columbia did not abuse its discretion in refusing to quash writ of attachment before judgment under the rule of forum non conveniens. D.C. Code 1940, §§ 11-719, 16-301. *Rice v. Salnier*, 86 A.2d 175, 1952 D.C. App. LEXIS 129 (Cr.App. 1952).

Under statute providing that in action for recovery of debt, clerk shall issue writ of attachment if plaintiff files affidavit stating that defendant is not a resident of the District of Columbia, plaintiff who was nonresident of the



District was entitled to implement his suit by writ of attachment before judgment. D.C. Code 1940, §§ 11-719, 16-301. *Rice v. Salmier*, 86 A.2d 175, 1952 D.C. App. LEXIS 129 (Cr.App. 1952).

Where defendant had moved his family to new accommodations in Maryland, defendant was a "nonresident" of District of Columbia within attachment statute, notwithstanding his place of business remained in District of Columbia, and he planned to move back as soon as he could find accommodations. D.C. Code 1940, § 16-301. *Fink v. Katz*, 68 A.2d 813, 1949 D.C. App. LEXIS 266 (Cr.App. 1949).

"Nonresident", as used in attachment statute, must be taken in its ordinary and usual signification. D.C. Code 1940, § 16-301. *D'Elia & Marks Co. v. Lyon*, 31 A.2d 647, 1943 D.C. App. LEXIS 213 (Cr.App. 1943).

That defendant had an established office in the District of Columbia and presumably was available for personal service was not material in determining whether he was a "nonresident" within attachment statute. D.C. Code 1940, § 16-301. *D'Elia & Marks Co. v. Lyon*, 31 A.2d 647, 1943 D.C. App. LEXIS 213 (Cr.App. 1943).

Whether defendant was subject to attachment as a nonresident would be determined as of time of issuing and serving writ of attachment. D.C. Code 1940, § 16-301. *D'Elia & Marks Co. v. Lyon*, 31 A.2d 647, 1943 D.C. App. LEXIS 213 (Cr.App. 1943).

Evidence that physician with office in District of Columbia boarded up his Maryland home and, with his family, moved to expensive apartment in the District of Columbia under one-year lease, intending to move back to Maryland when he could afford it, authorized quashing of attachment of physician's property on ground that physician was not a "nonresident" of the District of Columbia. D.C. Code 1940, § 16-301. *D'Elia & Marks Co. v. Lyon*, 31 A.2d 647, 1943 D.C. App. LEXIS 213 (Cr.App. 1943).

#### — Misrepresentation, nonresidents.

In action against non-resident taxicab operator to collect premiums on automobile insurance policies evidence sustained finding that taxicab driver employed by defendant was lured into the District of Columbia by trickery in order that the taxicab driven by him might be attached. D.C. Code 1940, § 16-301 et seq. *Guardian Management Corp. v. Huffman*, 61 A.2d 472, 1948 D.C. App. LEXIS 184 (Cr.App. 1948).

That defendant as a common carrier regularly sent its taxicabs into the District of Columbia would not change the effect of procuring the presence of defendant's taxicab in the District by misrepresentation in order that the taxicab might be attached. D.C. Code 1940, § 16-301 et seq. *Guardian Management Corp.*

*v. Huffman*, 61 A.2d 472, 1948 D.C. App. LEXIS 184 (Cr.App. 1948).

Where non-resident taxicab operator's taxicab driver was lured into the District of Columbia in order that taxicab might be attached there the court would in order to protect its process quash the attachment and direct return of cash deposit which was made in lieu of bond to perform judgment of the court. D.C. Code 1940, § 16-301 et seq. *Guardian Management Corp. v. Huffman*, 61 A.2d 472, 1948 D.C. App. LEXIS 184 (Cr.App. 1948).

#### Quashing of attachment.

On motion of defendant to quash plaintiff's attachment, plaintiff has burden of proving facts alleged in his affidavit as a ground for suing out attachment, and mere suspicion that defendant is about to remove property from a district to defeat just demands against him will not suffice. D.C. Code 1961, §§ 16-501(c)(1), (d)(1, 4). *Washington Bldg. Services, Inc. v. United Janitorial Services, Inc.*, 352 F.2d 678, 1965 U.S. App. LEXIS 4828 (C.A.D.C. 1965).

Verification of complaint describing defendant as Maryland corporation was not so fatally defective as to require quashing of attachment issued against defendant before judgment. D.C. Code 1961, § 16-301. *Graham Associates, Inc. v. Fell*, 192 A.2d 129, 1963 D.C. App. LEXIS 249 (App. 1963).

Court did not abuse its discretion in denying motion to quash order of condemnation of funds attached and to set aside default judgment, where defendant had filed no responsive pleadings after its motion to strike complaint and to quash attachment were denied and after unsuccessful negotiations to reach a settlement. D.C. Code 1961, § 16-301. *Union Storage Co. v. Young*, 183 A.2d 760, 1962 D.C. App. LEXIS 370 (Cr.App. 1962).

#### Res judicata.

Where judgment was rendered for plaintiff against defendant and for defendant against third-party defendant for identical sums, and judgment contained paragraph declaring that attachment before judgment of defendant against third-party defendant was void because of alleged defect in attachment affidavit, and referring cause to auditor to take proof of damages sustained by third-party defendant but refusing to release surety on attachment bond at that time, ruling that attachment was void was not res judicata when surety subsequently sought release from liability on bond. D.C. Code 1961, §§ 16-501(c)(1), (d)(1, 4). *Washington Bldg. Services, Inc. v. United Janitorial Services, Inc.*, 352 F.2d 678, 1965 U.S. App. LEXIS 4828 (C.A.D.C. 1965).

#### Review.

The credibility of witnesses and the weight to be given to their testimony could not be deter-



mined on appeal from order of Municipal Court quashing writ of attachment. D.C. Code 1940, § 16-307. *Davis v. Trumbull*, 61 A.2d 622, 1948 D.C. App. LEXIS 196 (Cr.App. 1948).

#### **Time for attachment.**

Writ of attachment may be issued before judgment or any time while judgment is in force; thus, person having claim, whether or not reduced to judgment, may reasonably assure himself of satisfaction by freezing property. D.C. Code § 16-501. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Essentially no limit is fixed on time for attachment in anticipation of satisfaction of viable claim. D.C. Code §§ 16-501, 16-543. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

#### **Transfer of property subject to attachment.**

An attachment does not preclude a subsequent transfer of the attached property; if attachment has been perfected, however, transferee takes property subject to attachment. D.C. Code §§ 16-501 et seq. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

#### **Trial by jury.**

The right to trial by jury is governed by the attachment statute and not by rule of Municipal Court dealing with right to trial by jury. D.C. Code 1940, § 16-307; Rules of Municipal Court, rule 35. *Davis v. Trumbull*, 61 A.2d 622, 1948 D.C. App. LEXIS 196 (Cr.App. 1948).

#### **Trust funds.**

A spendthrift trust may under some circumstances be subjected to the obligation to support a wife or child, but enforcement of such obligation requires either personal service on beneficiary or an attachment of his equitable interest in the fund after execution of bond.

D.C. Code 1940, § 16-301. *Buchanan v. National Sav. & Trust Co.*, 146 F.2d 13, 1944 U.S. App. LEXIS 2221 (1944).

Trust funds coming into possession of Chief Probation Officer of Federal District Court in Criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. D.C. Code 1951, §§ 16-303 et seq., 24-102; 18 U.S.C. § 3651. *Manley v. Butterfield*, 111 F.Supp. 783, 1953 U.S. Dist. LEXIS 3027 (D.D.C.1953).

#### **Validity.**

District of Columbia statute authorizing attachment before judgment in case of nonresident debtor, authorizing debtor to file traversing affidavits and authorizing jury trial of issues raised by traverse was, as applied to nonresident wage earner in District of Columbia, statute narrowly drawn to meet unusual condition and was not violative of due process clause of Fifth Amendment. D.C. Code §§ 16-501 et seq., 16-502, 16-505, 16-506; U.S. Const. Amends. 5, 14; 18 U.S.C. §§ 2282, 2284. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

#### **Waiver.**

Debtor waived argument, first raised on appeal, that writ of attachment did not comport with statutory requirements, though debtor filed trial court motion to release excess "wages" and property and filed counterclaim challenging attachment as excessive, as motion and counterclaim did not make the argument regarding statutory requirements, and debtor had not availed herself of statutory remedies available at time of attachment or during seven years leading to trial. D.C. Code 1981, §§ 16-501(d)(1, 3), 16-509. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

## **§ 16-502. Service of notice; publication.**

(a) A writ issued pursuant to section 16-501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (Superior Court of the District of Columbia) for the District of Columbia.

A B, plaintiff,

versus

Civil Action No. \_\_\_\_\_.

C D, defendant,

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this \_\_\_\_ day of \_\_\_\_\_, ordered that the defendant appear in this court or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

\_\_\_\_\_, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders.

(Dec. 23, 1963, 77 Stat. 544, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(1).)

**Prior Codifications.** — 1981 Ed., § 16-502.

1973 Ed., § 16-502.

## CASE NOTES

### ANALYSIS

Bona fide purchasers.

Construction and application.

Corporations.

Posting.

Recording of deed.

Substituted service.

Sureties.

Transfer of property subject to attachment.

### Bona fide purchasers.

Where property was transferred by quitclaim deed to transferor prior to plaintiff's full compliance with attachment statute, taking by quitclaim deed did not preclude transferee from proving that it was a bona fide purchaser who took the property without notice of writ of attachment. D.C. Code § 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

### Construction and application.

Because a writ of attachment before judgment is a harsh and drastic remedy, strict compliance with procedures established by statute is required. D.C. Code §§ 16-501 et seq. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

### Corporations.

A writ of attachment after judgment may be

properly served on a corporate garnishee by delivering it to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Service of writ of attachment upon corporation accomplished by delivery of writ to corporation's registered agent was valid. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

### Posting.

Although delivery of writ of attachment before judgment to the marshal did create inchoate lien on defendant's property, mere posting of property did not comply with notice procedures mandated by code and, consequently, property was not effectively levied on the date on which it was posted by the marshal. D.C. Code §§ 16-507(b), 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

### Recording of deed.

Creditor's attachment of property was not perfected prior to debtor's transfer of property to purchaser, and writ of attachment was in-



valid as to purchaser; although property was not conveyed to purchaser until after writ of attachment had been issued and posted, service was not effected until after purchaser recorded deed. D.C. Code 1981, §§ 16-507, 16-508. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8, 1988 U.S. Dist. LEXIS 15615 (1988).

#### **Substituted service.**

Tenant was properly served with summons and complaint for possession of real property; process server went to premises to serve tenant with summons and complaint and, after being informed that tenant was out of state and that tenant's employee was authorized to receive service, summons and complaint were left with employee. D.C. Code 1989, § 16-1502. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

#### **Sureties.**

While rule 73(f) was not available as a means

of serving surety on attachment bond on defendant's motion for judgment against plaintiff and surety for damages sustained by the attachment, the ability of defendant to make service upon surety was not thereby necessarily foreclosed. D.C. Code 1961, §§ 16-301, 16-501, 28-2401, 28-2403; Fed. Rules Civ. Proc. rule 73(f), 18 U.S.C. *Schmidt v. Smith*, 344 F.2d 168, 1965 U.S. App. LEXIS 6663 (C.A.D.C. 1965).

#### **Transfer of property subject to attachment.**

Where valid transfer of property occurred before transferor himself had been given notice of a sufficiently levied writ of attachment in compliance with statute, transferee took property free of writ of attachment which had been sought against transferor. D.C. Code § 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

### **§ 16-503. Attachment for debts not due.**

A creditor may maintain an action and have an attachment against his debtor's property and credits, where his debt is not yet due and payable, if the plaintiff, his agent, or attorney files in the clerk's office, at the commencement of the action, an affidavit, supported by testimony of one or more witnesses, showing the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him if only the ordinary process of law is used to obtain judgment against him, and if he also complies with the condition as to filing a bond prescribed by section 16-501. The plaintiff may not have judgment before his claim becomes due. If the attachment is quashed the action shall be dismissed, but without prejudice to a future action.

(Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

**Cross references.** — Nonresident or absent defendants, service by publication, see § 13-336.

**Prior Codifications.** — 1981 Ed., § 16-503. 1973 Ed., § 16-503.

### **§ 16-504. Additional attachments.**

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court.

(Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-504. 1973 Ed., § 16-504.



## § 16-505. Sufficiency of plaintiff's bond.

The defendant or any other person interested in the proceedings who is not satisfied with the sufficiency of the surety or with the amount of the penalty named in the bond filed pursuant to section 16-501, may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court. If the plaintiff fails to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper.

(Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-505. 1973 Ed., § 16-505.

### CASE NOTES

#### In general.

Costs of suit and interest which may accrue on the plaintiff's claim during litigation are not to be considered in fixing the amount of a bond in an attachment proceeding before judgment instituted by the plaintiff. If the plaintiff's claim, irrespective of costs and interest to accrue, is less than one-half of the penalty of the bond, the bond is sufficient, under Code of Law, D.C. 1901, § 445. *Rhodes v. Bowling Green White Stone Co. of Kentucky*, 43 App.D.C. 298, 1915 U.S. App. LEXIS 2613 (1915).

If creditor claiming priority of its judgment lien over that of garnishor under writ of attachment was unsatisfied with amount of security provided by means of attachment bond, its remedy was to first pursue application under statute authorizing application for order requiring additional bond, and to thereafter move to quash in event of garnishor's failure to comply with any order of court. D.C. Code 1973, §§ 16-501(e), 16-505. *Metro Rentals, Inc. v. Wagner*, 435 A.2d 1072, 1981 D.C. App. LEXIS 374 (1981).

## § 16-506. Traversing affidavits; quashing writ of attachment; trial of issues.

If the defendant files affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment. When, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney, the court shall quash the writ of attachment. This issue may be tried by the court or a judge at chambers after three days' notice. The issue may be tried as well upon oral testimony as upon affidavits. If the court deems it expedient, a jury may be impaneled to try the issue.

(Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-506. 1973 Ed., § 16-506.

### CASE NOTES

#### ANALYSIS

Discretion of court.  
In general.  
Purpose.

#### Validity.

#### Discretion of court.

Under statute providing that, when a defendant files an affidavit traversing plaintiff's af-

fidavit, the court shall determine whether just grounds for issuing the attachment existed and that, if the court shall deem it expedient, a jury may be impaneled to try the issue, whether jury shall be impaneled rests largely in the discretion of the trial judge. D.C. Code 1940, 16-307. *Davis v. Trumbull*, 61 A.2d 622, 1948 D.C. App. LEXIS 196 (Cr.App. 1948).

Where defendant filed an affidavit traversing plaintiff's affidavit on which writ of attachment was issued and request for jury trial was made on a Saturday, and judge offered to set motion for jury trial on the following Monday, and plaintiff's counsel said he could not be ready until the following Wednesday or Thursday, whereupon the judge ordered the hearing to proceed without a jury, there was no improper exercise of discretion. D.C. Code 1940, § 16-307. *Davis v. Trumbull*, 61 A.2d 622, 1948 D.C. App. LEXIS 196 (Cr.App. 1948).

#### **In general.**

It was error to release surety from liability on bond executed to obtain a release of attachment of property of third-party defendant by defendant because attachment affidavit was allegedly defective, where judgment was rendered for plaintiff against defendant and for defendant against third-party defendant for identical sums, and judgment contained paragraph declaring that attachment was void because allegation in affidavit was mere conclusion and referring cause to auditor to take proof of damages sustained by third-party defendant by reason of attachment and to report thereon to court. D.C. Code 1961, §§ 16-501(c, d), 16-506. *Washington Bldg. Services, Inc. v. United Janitorial Services, Inc.*, 352 F.2d 678, 1965 U.S. App. LEXIS 4828 (C.A.D.C. 1965).

District of Columbia statute authorizing attachment before judgment in case of nonresident wage earner authorized her in her affidavit to traverse: (1) grounds of creditor's claim, (2) creditor's claim that it had just right to recover amount claimed in complaint, (3) that contract sued on had been breached and that damages had resulted therefrom, and (4) that wage earner was not resident of District of Columbia. D.C. Code § 16-506. *Tucker v. Bur-*

*ton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

Defendant who, in traversing attachment before judgment obtained on the ground of non-residency, admitted that his home was in Maryland and denied that he owed the amount claimed and averred that statements in the plaintiff's affidavit for attachment were not true traversed only main issue in complaint and was not entitled to have attachment quashed. D.C. Code 1951, § 16-301. *National Brick & Supply Co. v. Bradshaw*, 91 A.2d 838, 1952 D.C. App. LEXIS 222 (Cr.App. 1952).

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. D.C. Code 1951, §§ 16-301, 16-307, 16-331. *National Brick & Supply Co. v. Bradshaw*, 91 A.2d 838, 1952 D.C. App. LEXIS 222 (Cr.App. 1952).

#### **Purpose.**

The purpose of the traverse of an attachment before judgment is to present to the court for determination the issue of whether the facts set forth in the plaintiff's affidavit as ground for issuing the attachment are true, and whether there is just ground for issuing the attachment. D.C. Code 1951, § 16-307. *National Brick & Supply Co. v. Bradshaw*, 91 A.2d 838, 1952 D.C. App. LEXIS 222 (Cr.App. 1952).

#### **Validity.**

District of Columbia statute authorizing attachment before judgment in case of nonresident debtor, authorizing debtor to file traversing affidavits and authorizing jury trial of issues raised by traverse was, as applied to nonresident wage earner in District of Columbia, statute narrowly drawn to meet unusual condition and was not violative of due process clause of Fifth Amendment. D.C. Code §§ 16-501 et seq., 16-502, 16-505, 16-506; U.S. Const. Amends. 5, 14; 18 U.S.C. §§ 2282, 2284. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

## **§ 16-507. Property subject to attachment; liens; priorities.**

(a) An attachment may be levied on the lands and tenements, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether the defendant's title to the property is legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business.

(b) An attachment shall be a lien on the property attached from the date of its delivery to the marshal. When different persons obtain attachments against



the same defendant the priorities of the liens of the attachments shall be according to the dates when they were so delivered to the marshal.

(Dec. 23, 1963, 77 Stat. 545, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-507. 1973 Ed., § 16-507.

## CASE NOTES

### ANALYSIS

Bankruptcy.  
Funds subject to attachment.  
In general.  
Posting.  
Recording.  
Restraining orders.

### Bankruptcy.

Automatic stay provision of Bankruptcy Code did not act to extinguish all previously issued writs of attachment on debtor's wages and did not give priority to first attachment filed after debt was determined to be nondischargeable by Bankruptcy Court; rather, stay only required immediate cessation of payments to each garnishor, and thus, writ filed first in time before bankruptcy continued to have priority. D.C. Code 1981, § 16-572; Bankr.Code, 11 U.S.C. § 362. *Rab v. Safeco Ins. Co.*, 556 A.2d 1072, 1989 D.C. App. LEXIS 56 (1989).

### Funds subject to attachment.

Fund or credits must be actually due and ascertainable in amount in order to be subject to garnishment. D.C. Code § 16-507(b). *Cummings General Tire Co. v. Volpe Constr. Co.*, 230 A.2d 712, 1967 D.C. App. LEXIS 173 (App. 1967).

Claims against insurance policies may be garnished only after entry of judgment against the insured. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

### In general.

Where United States Government secured writ of execution to enforce judgment from same federal district court that rendered judgment of \$10,000 fine against defendant in prior gambling conviction, and properly levied execution against funds of defendant held by county after seizure by police in a raid in connection with state gambling investigation of defendant by service of garnishment upon county director of finance, who occupied status of garnishee of funds that rightfully belonged to defendant in view of fact that no charges against defendant survived, such funds were completely subject to valid judgment in favor of United States and county was required to deliver garnished funds. D.C. Code 1973, § 16-556; 18 U.S.C. § 3565; 18 U.S.C. § 2413; Fed.Rules Civ.Proc. Rules 69(a), 81(e), 18 U.S.C. *United States v. Thornton*, 672

F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Where attachment failed because garnishee did not owe debtor any money at time of garnishment, attaching creditor could not prevail over subsequent attaching creditor who obtained attachment against the same garnishee for debt due the same debtor but at time when garnishee did owe money to debtor. D.C. Code § 16-507(b). *Cummings General Tire Co. v. Volpe Constr. Co.*, 230 A.2d 712, 1967 D.C. App. LEXIS 173 (App. 1967).

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens, previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. D.C. Code 1940, §§ 16-301, 16-317. *Troshinsky v. Feldman*, 81 A.2d 91, 1951 D.C. App. LEXIS 166 (Cr.App. 1951).

### Posting.

Although delivery of writ of attachment before judgment to the marshal did create inchoate lien on defendant's property, mere posting of property did not comply with notice procedures mandated by code and, consequently, property was not effectively levied on the date on which it was posted by the marshal. D.C. Code §§ 16-507(b), 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

### Recording.

Creditor's attachment of property was not perfected prior to debtor's transfer of property to purchaser, and writ of attachment was invalid as to purchaser; although property was not conveyed to purchaser until after writ of attachment had been issued and posted, service was not effected until after purchaser recorded deed. D.C. Code 1981, §§ 16-507, 16-508. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8, 1988 U.S. Dist. LEXIS 15615 (1988).

### Restraining orders.

Where wife who was separated from her



husband obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds in account at first bank, claim of second bank, which had made payments to third party pursuant to checks signed by husband that had been presented to second bank on September 28, September 29, and October 2, 1972, was inferior to

wife's where such claim did not become a lien on the funds until delivery of second bank's attachment before judgment to United States marshal on October 11, 1972, and second bank was not entitled to payment until attachment first served was paid. D.C. Code §§ 16-501, 16-507. *Trigo v. Riggs Nat'l Bank*, 338 A.2d 445, 1975 D.C. App. LEXIS 381 (1975).

## § 16-508. Attachment of real property.

An attachment is sufficiently levied on the lands and tenements of the defendant by:

(1) mentioning and describing the property in an indorsement on the attachment, made by the officer to whom it is delivered for service, to the following effect:

"Levied on the following estate of the defendant, A B, to wit: (Here describe) this \_\_\_\_ day of \_\_\_\_\_. C D, Marshal."; and

(2) serving a copy of the attachment, with the indorsement, and the notice required by section 16-502, on the person, if any, in possession of the property.

(Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-508. 1973 Ed., § 16-508.

### CASE NOTES

#### ANALYSIS

Bona fide purchasers.

Posting.

Recording.

Transfer of property.

#### Bona fide purchasers.

Where property was transferred by quitclaim deed to transferor prior to plaintiff's full compliance with attachment statute, taking by quitclaim deed did not preclude transferee from proving that it was a bona fide purchaser who took the property without notice of writ of attachment. D.C. Code § 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

#### Posting.

Although delivery of writ of attachment before judgment to the marshal did create inchoate lien on defendant's property, mere posting of property did not comply with notice procedures mandated by code and, consequently, property was not effectively levied on the date on which it was posted by the marshal. D.C.

Code §§ 16-507(b), 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

#### Recording.

Creditor's attachment of property was not perfected prior to debtor's transfer of property to purchaser, and writ of attachment was invalid as to purchaser; although property was not conveyed to purchaser until after writ of attachment had been issued and posted, service was not effected until after purchaser recorded deed. D.C. Code 1981, §§ 16-507, 16-508. *Cape Cod Bank & Trust Co. v. Avram*, 697 F. Supp. 8, 1988 U.S. Dist. LEXIS 15615 (1988).

#### Transfer of property.

Where valid transfer of property occurred before transferor himself had been given notice of a sufficiently levied writ of attachment in compliance with statute, transferee took property free of writ of attachment which had been sought against transferor. D.C. Code § 16-508. *Jack Development, Inc. v. Howard Eales, Inc.*, 388 A.2d 466, 1978 D.C. App. LEXIS 528 (1978).

## § 16-509. Attachment of personal property; undertaking by defendant or person in possession.

(a) An attachment shall be levied upon personal chattels by the officer

taking them into his possession and custody, unless the defendant gives the officer his undertaking to be filed in the cause, with sufficient security, substantially in the form set forth in subsection (b) of this section, or unless the person in whose possession the property is attached gives the officer his undertaking to be filed in the cause substantially in the form set forth in subsection (c) of this section. In cases where such undertakings are given, the attachment is sufficiently levied by the taking of the undertaking.

(b) An undertaking by the defendant shall contain the substance of the following form:

A B, plaintiff,

versus

Civil Action No. \_\_\_\_\_.

C D, defendant.

The defendant and \_\_\_\_\_, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, anno Domini nineteen hundred \_\_\_\_\_, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to the property, which judgment may be rendered against any or all the parties whose names are hereto signed.

(Signed)

C D.

E F.

(c) An undertaking by the person in whose possession the property is attached shall contain the substance of the following form:

A B, plaintiff,

versus

Civil Action No. \_\_\_\_\_.

C D, defendant.

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of \_\_\_\_\_ dollars; and now, therefore, E F and G H, as surety, appearing in the action, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all the undersigned for the value of the property and costs, to be executed against them, and each of them, unless the property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.

G H.

The recital of the undertaking in this subsection shall contain a sufficient description of the property and its value ascertained by an appraisalment to be made under direction of the officer and returned with the writ.

(Dec. 23, 1963, 77 Stat. 546, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-509. 1973 Ed., § 16-509.

## CASE NOTES

## ANALYSIS

Discharge of sureties.

Effect of undertaking.

In general.

**Discharge of sureties.**

Discharge from original action of defendant who had deposited cash in lieu of writ of attachment, as result of affirmance of judgment in her favor, did not discharge her as surety for a codefendant against whom judgment was later rendered. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

**Effect of undertaking.**

The effect of statutory bond and undertaking is the complete discharge of attached property from custody of the law, and substitution therefor of the personal obligation of bondsman. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

**In general.**

Debtor waived argument, first raised on appeal, that writ of attachment did not comport with statutory requirements, though debtor filed trial court motion to release excess "wages" and property and filed counterclaim

challenging attachment as excessive, as motion and counterclaim did not make the argument regarding statutory requirements, and debtor had not availed herself of statutory remedies available at time of attachment or during seven years leading to trial. D.C. Code 1981, §§ 16-501(d)(1, 3), 16-509. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

Defendant who, pursuant to consent order entered in lieu of writ of attachment, deposited cash with court, acted not only for herself as defendant but also for her codefendants as surety, and was bound to pay judgment rendered in favor of plaintiff against a codefendant to extent of the appraised value of the attached property. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

Where plaintiff had not posted supersedeas bond on his appeal from judgment for defendants, but there was no other change in circumstance to warrant release of cash deposit which had been made by one defendant pursuant to consent order in lieu of attachment, such defendant as surety should be required to return the deposit. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

## § 16-510. Release of property or credits from attachment; sufficiency of undertaking.

(a) Either the defendant or the person in whose possession the property is attached may obtain a release of the property from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him by section 16-509, with security to be approved by the court.

(b) The plaintiff may except to the sufficiency of the undertaking accepted by the marshal and, if the exceptions are sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which the marshal shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through the default.

(c) Either the defendant or the person in whose possession credits are attached may obtain a release of the credits from the attachment by filing an undertaking with security to be approved by the court.

(Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-510. 1973 Ed., § 16-510.



CASE NOTES

ANALYSIS

Effect of undertaking.  
In general.  
Release after judgment.

**Effect of undertaking.**

The effect of statutory bond and undertaking is the complete discharge of attached property from custody of the law, and substitution therefor of the personal obligation of bondsman. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

**In general.**

Defendant who, pursuant to consent order entered in lieu of writ of attachment, deposited cash with court, acted not only for herself as defendant but also for her codefendants as surety, and was bound to pay judgment rendered in favor of plaintiff against a codefendant to extent of the appraised value of the attached property. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

Where plaintiff had not posted supersedeas bond on his appeal from judgment for defendants, but there was no other change in circumstance to warrant release of cash deposit which had been made by one defendant pursuant to consent order in lieu of attachment, such defen-

dant as surety should be required to return the deposit. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

Discharge from original action of defendant who had deposited cash in lieu of writ of attachment, as result of affirmance of judgment in her favor, did not discharge her as surety for a codefendant against whom judgment was later rendered. D.C. Code §§ 16-509(b), 16-510. *Apostolides v. Colecchia*, 260 A.2d 685, 1970 D.C. App. LEXIS 194 (App. 1970).

Where non-resident taxicab owner procured release of attached taxicab by cash deposit instead of giving bond as required by the Code such irregularity was waived and case was required to be disposed of as if bond had been given to perform judgment of the court. D.C. Code 1940, § 16-310. *Guardian Management Corp. v. Huffman*, 61 A.2d 472, 1948 D.C. App. LEXIS 184 (Cr.App. 1948).

**Release after judgment.**

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, and asked court to release attachment, the request was properly denied, since statute authorizes release of attachment before judgment but not after judgment. D.C. Code 1940, §§ 16-310, 16-311. *Laughlin v. Bank of Commerce & Savings*, 134 F.2d 530, 1943 U.S. App. LEXIS 3606 (1943).

**§ 16-511. Attachment of credits or partnership interest; retention of property or credits by garnishee.**

(a) An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16-502. The undivided interest of the defendant in a partnership business may be levied upon by a similar service on the defendant's partner or partners.

(b) Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period, the garnishee shall incur no liability for the retention.

(Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

## § 16-512. Attachment and levy upon wages of nonresident.

An attachment issued under section 16-501 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 16-571 shall be subject to the provisions of subchapter III of this chapter; except that the employer-garnishee shall pay over the wages withheld pursuant to that subchapter only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of that subchapter to any such attachment, the term "judgment debtor", as used therein, means the defendant in the case in which the attachment is issued; and the term "judgment creditor", as used therein, means the plaintiff in such case.

(Dec. 23, 1963, 77 Stat. 547, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-512. 1973 Ed., § 16-512.

### CASE NOTES

#### ANALYSIS

In general.  
Validity.

#### In general.

District of Columbia statute authorizing attachment before judgment in case of nonresident wage earner authorized her in her affidavit to traverse: (1) grounds of creditor's claim, (2) creditor's claim that it had just right to recover amount claimed in complaint, (3) that contract sued on had been breached and that damages had resulted therefrom, and (4) that wage earner was not resident of District of Columbia. D.C. Code § 16-506. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

Where wage earner whose wages were attached before judgment was nonresident of jurisdiction insuing attachment, this was "unusual condition" within United States Supreme

Court ruling that statute which was not narrowly drawn to meet unusual condition was violative of due process as applied to resident wage earner. U.S. Const. Amend. 14; D.C. Code § 16-501 et seq. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

#### Validity.

District of Columbia statute authorizing attachment before judgment in case of nonresident debtor, authorizing debtor to file traversing affidavits and authorizing jury trial of issues raised by traverse was, as applied to nonresident wage earner in District of Columbia, statute narrowly drawn to meet unusual condition and was not violative of due process clause of Fifth Amendment. D.C. Code §§ 16-501 et seq., 16-502, 16-505, 16-506; U.S. Const. Amendments. 5, 14; 18 U.S.C. §§ 2282, 2284. *Tucker v. Burton*, 319 F. Supp. 567, 1970 U.S. Dist. LEXIS 9549 (1970).

## § 16-513. Advance payment of wages to avoid attachment or garnishment.

It is unlawful for an employer to pay salary or earnings to an employee in advance of the time they are due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of the employee, and such an advance payment, as to the attaching creditor, is void.

After the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when the salary or earnings are due and payable made within a period of six months after the date of service of the writ or before the earlier satisfaction of the judgment, whichever is the earlier, is as to such attaching creditor presumed to be in violation of this section and casts upon the employer the

burden of proving that the advance payment or payments were not for the purpose of avoiding the attachment of the salary or earnings.

(Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-513. 1973 Ed., § 16-513.

### **§ 16-514. Credits or property held for two or more persons or in representative capacity.**

When a writ of attachment is served on a garnishee, and the garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for a person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, the credit or property is not subject to withdrawal by any person, but shall be held by the garnishee until the attachment is dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court is a complete discharge of the garnishee from all liability to any person in respect of the credit or property. The provisions of this section do not apply to a credit or property of a partnership.

(Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-514. 1973 Ed., § 16-514.

### **§ 16-515. Attachment of judgments and money or property in hands of marshal.**

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that directed by section 16-511 upon the debtor owing the debts. Execution may issue for the enforcement of the judgment or decree, notwithstanding the attachment, but the money collected upon the execution shall be paid into court to abide the event of the proceedings in attachment and applied as the court directs.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do.

(Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-515. 1973 Ed., § 16-515.

### **§ 16-516. Attachment of money or property in hands of executor or administrator.**

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can



not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled.

(Dec. 23, 1963, 77 Stat. 548, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(2).)

**Prior Codifications.** — 1981 Ed., § 16-516. 1973 Ed., § 16-516.

### § 16-517. Attachment of other property in replevin action.

Where the action is to replevy specific personal property and it has not been replevied, other property may be attached in the action to recover damages and costs, and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-517. 1973 Ed., § 16-517.

### § 16-518. Preservation of property; sale; receiver.

The court may make all orders necessary for the preservation of the property attached during the pendency of the action. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-518. 1973 Ed., § 16-518.

### § 16-519. Defenses by garnishee.

A garnishee in an attachment proceeding may make any defense available to the defendant in the action in which the garnishment is issued.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-519. 1973 Ed., § 16-519.

#### CASE NOTES

##### **Forum non conveniens.**

In view of fact that only connection suit on note had with District of Columbia courts was

that garnishee, the defendant's employer, had a resident agent in the District of Columbia upon whom service of writ of garnishment was ob-

tained, doctrine of forum non conveniens was applicable and could properly be used to quash prejudgment writ of attachment. Superior Court Civil Rules, rule 64-I; D.C. Code §§ 16-

519, 16-581. *Midland Finance of Cumberland v. Green*, 279 A.2d 518, 1971 D.C. App. LEXIS 175 (1971).

## § 16-520. Defending against the attachment; trial of issues.

A defendant, any garnishee, party to a forthcoming undertaking, or an officer who might be adjudged liable to the plaintiff by reason of the undertaking being adjudged insufficient, or a stranger to the action who may make claim to the property attached, may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact made may be tried with a jury if any party so desires.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-520. 1973 Ed., § 16-520.

### CASE NOTES

#### ANALYSIS

In general.  
Intervention.  
Standing.  
Third parties.

#### In general.

Party which admitted that it had no interest or claim in funds was barred not only from filing of answer to attachment but also from filing any pleading in garnishment action. D.C. Code 1981, §§ 16-551, 16-554. *Visions Foundation, Inc. v. Falcon Color, Inc.*, 606 A.2d 1027, 1992 D.C. App. LEXIS 112 (1992).

#### Intervention.

Right of intervention by principal or cestui que trust claiming that funds on deposit in name of debtor are held by him as trustee is only subject to restriction that intervenor must have interest in attached property by way of lien or otherwise, or by claim of title to property. D.C. Code 1961, § 16-520. *Gay v. Peoples Hard-*

*ware Co.*, 221 A.2d 923, 1966 D.C. App. LEXIS 207 (App. 1966).

#### Standing.

Debtor lacked standing to assert absent creditors' perfected security interests with respect to attached property against another creditor's claim; secured creditor's interests were not debtor's interest, and debtor was not licensed attorney who could prosecute claim on behalf of another. D.C. Code 1981, §§ 16-520, 16-523. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

#### Third parties.

Party which asserted that funds subject to attachment belonged to a third party and not to it could not assert ownership of the funds in order to obtain a hearing and then defend against the attachment by asserting that it did not own those funds. D.C. Code 1981, § 16-551. *Visions Foundation, Inc. v. Falcon Color, Inc.*, 606 A.2d 1027, 1992 D.C. App. LEXIS 112 (1992).

## § 16-521. Interrogatories to garnishee; oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment, or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers under oath to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the

garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-521. . . 1973 Ed., § 16-521.

### **§ 16-522. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.**

If any garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's claim, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-520. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding.

(Dec. 23, 1963, 77 Stat. 549, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-522. . . 1973 Ed., § 16-522.

### **§ 16-523. Claims to attached property.**

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment. The court, without other pleading, shall try the issues raised by the claim, with a jury if either party so requests, and make all orders necessary to protect any rights of the claimant.

(Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-523. . . 1973 Ed., § 16-523.

#### **CASE NOTES**

##### **Standing.**

Debtor lacked standing to assert absent creditors' perfected security interests with respect to attached property against another creditor's claim; secured creditor's interests were not

debtor's interest, and debtor was not licensed attorney who could prosecute claim on behalf of another. D.C. Code 1981, §§ 16-520, 16-523. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

### **§ 16-524. Judgment generally; condemnation of attached property.**

(a) If the defendant in the action has been served with process, final judgment may not be rendered against the garnishee until the action against the defendant is determined.

(b) If in such an action judgment is rendered for the defendant, the



garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

(c) If in such an action judgment is rendered in favor of the plaintiff against the defendant, and it appears that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as is directed by sections 16-525 to 16-527.

(Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-524. 1973 Ed., § 16-524.

#### CASE NOTES

#### **Reconsideration of condemnation judgment.**

Trial court's refusal to grant defendant's motion for reconsideration of condemnation judgment, in light of uncontroverted allegation by defendant that it had no property belonging to

debtor defendant, and in light of defendant's promptness in seeking redress, was abuse of discretion. Civil Rule 60(b); D.C. Code 1981, §§ 16-501 to 16-584. *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

### **§ 16-525. Condemnation and sale of property; proceeds of sale under interlocutory order.**

In any form of action, where specific property has been attached and remains under the control of the court, judgment of condemnation of the property shall be entered, and as much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri facias. If the property was sold under interlocutory order of the court, the proceeds, or as much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court.

(Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-525. 1973 Ed., § 16-525.

### **§ 16-526. Judgment against garnishee.**

(a) When a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution may be had thereon. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon.

(Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-526. 1973 Ed., § 16-526.

### § 16-527. Judgment in case of undertaking for retention of property or credits.

(a) When property or credits attached are released upon an undertaking given as provided by sections 16-509 and 16-510, and judgment in the action is rendered in favor of the plaintiff, it is a joint judgment against both the defendant and all persons in the undertaking for the appraised value of the property or the amount of the credits.

(b) When the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided by section 16-509, judgment of condemnation of the property shall be rendered as provided by section 16-525, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of the property, not exceeding the plaintiff's claim, the judgment to be entered satisfied if the property is forthcoming and delivered to the marshal, undiminished in value, within ten days after the judgment; otherwise, execution thereon may be had against the garnishee and his surety or sureties; and if the property is so delivered to the marshal the same shall be sold by him under fieri facias to satisfy the judgment of condemnation.

(Dec. 23, 1963, 77 Stat. 550, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-527. 1973 Ed., § 16-527.

### § 16-528. Judgment protects garnishee.

A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned.

(Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-528. 1973 Ed., § 16-528.

### § 16-529. Attachment in actions for fraudulent conveyances.

(a) Where the ground upon which an attachment is applied for is that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

(b) The garnishee may have the same benefit of section 16-506 as the defendant in the action. If the court is of the opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by the garnishee, the attachment may be quashed as to the garnishee and the levy set aside.

(c) If the levy is not set aside, the garnishee may answer that he was a bona



fide purchaser from the defendant for value without notice of any fraud on the part of the defendant, and the answer shall be held to make an issue, without any further pleading in reply thereto; and issue may be tried as directed by section 16-520.

(d) When the issue is found in favor of the garnishee, judgment shall be rendered in his favor for his costs and a reasonable attorney fee. When the issue is found against the garnishee, but judgment in the action is rendered in favor of the defendant, the attachment shall be dissolved, and garnishee shall recover his costs.

(e) When the issue is found against the garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, and when it appears upon the verdict of a jury that the claim of the plaintiff against the defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed by section 16-524(c).

(Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

**Cross references.** — Fraudulent conveyances, remedies of creditors, see § 28-3107.

**Prior Codifications.** — 1981 Ed., § 16-529. 1973 Ed., § 16-529.

## § 16-530. Time for trial of issues.

All issues raised by answers to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as may be just.

(Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-530. 1973 Ed., § 16-530.

## § 16-531. Attachment dockets; index of attachments.

The clerk of the court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon. The attachments shall be indexed in the names of the defendant and of any person in whose possession the estate may have been levied upon.

(Dec. 23, 1963, 77 Stat. 551, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-531. 1973 Ed., § 16-531.

## § 16-532. Other remedies of judgment creditor.

Nothing herein contained deprives a judgment creditor of the right to file a civil action to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real



or personal estate by the defendant, made with intent to hinder, delay, and defraud his creditors, set aside.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-532. 1973 Ed., § 16-532.

### § 16-533. Attachment proceedings in Superior Court.

The provisions of this Code relating to attachments apply to attachment proceedings in the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(3)(A).)

**Prior Codifications.** — 1981 Ed., § 16-533. 1973 Ed., § 16-533.

## *Subchapter II. Attachment and Garnishment After Judgment in Aid of Execution.*

### § 16-541. Definition and applicability.

As used in this subchapter, "judgment" includes an unconditional decree for the payment of money, and this subchapter is applicable to such a decree.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Cross references.** — Child support enforcement, income withholding, see § 46-208.

Fraudulent conveyances, remedies of creditors, see § 28-3107.

Superior Court of the District of Columbia, jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-541. 1973 Ed., § 16-541.

### § 16-542. Issuance of attachment after judgment; costs.

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias. If costs are unnecessarily multiplied thereby they shall be charged to the party causing the attachment to be issued.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-542. 1973 Ed., § 16-542.

## CASE NOTES

### ANALYSIS

Discretion of court.

Effectiveness of lien.

Failure to answer writ.

In general.

Service of writ.

### Discretion of court.

Decision to enter judgment of condemnation lies in discretion of trial court, and is therefore reviewable for abuse of that discretion. D.C.

Code 1981, § 16-556(b). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

### Effectiveness of lien.

Delaware chancery court's seizure and injunction order, which effectively appointed receiver for judgment debtor, an insurance company, did not divest lien which judgment creditor had obtained through its prior attachment of judgment debtor's funds held by bank;

however, lien only applied to those funds held by bank on date writ of attachment was served and did not apply to any funds bank received thereafter. D.C. Code 1981, §§ 16-542, 16-546. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

Although steps in addition to serving writ of attachment may be required to obtain property of debtor held by a garnishee, judgment creditor has a valid lien as of date writ is served on garnishee. D.C. Code 1981, §§ 16-542, 16-546. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

#### **Failure to answer writ.**

A corporate garnishee's failure to answer a writ of attachment served upon its registered agent may prove fatal if a judgment of condemnation is subsequently sought and entered against it on behalf of the judgment creditor. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Judgment of condemnation may be entered if garnishee either fails to answer interrogatories accompanying writ of attachment or fails to show cause why judgment should not be entered; in either instance, critical factor for Court of Appeals to consider in reviewing trial court's exercise of discretion is whether garnishee was in fact indebted to judgment debtor or possessed any property belonging to the debtor. D.C. Code 1981, § 16-556(b). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

#### **In general.**

Attachment and garnishment exists only by statute and it is the statute that determines the extent, nature and scope of the process. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Investment company could not establish standing to assert claim against assets in federal civil forfeiture proceedings on grounds that

it held purported writ of attachment under District of Columbia law against specific assets held by garnishee trust pursuant to company's prior action against trust; company never moved for or obtained entry of judgment against trust in connection with writ of attachment following trust's failure to respond to interrogatories served with writ, as required by District of Columbia law to secure company's alleged interest in assets, and purported writ of attachment thereby was effectively dismissed. *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 772 F.Supp.2d 191, 2011 U.S. Dist. LEXIS 31193 (2011).

Writ directing judgment debtor's employer to divert certain of debtor's wages to clerk of court did not satisfy judgment and did not direct wages to be paid to judgment creditor; thus, writ was in aid of execution but was not a writ of execution. D.C. Code §§ 16-541 to 16-556. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

#### **Service of writ.**

Service of writ on garnishee creates a valid lien in favor of judgment creditor on a debtor's property held by garnishee. D.C. Code 1981, § 16-542. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

A writ of attachment after judgment may be properly served on a corporate garnishee by delivering it to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Service of writ of attachment upon corporation accomplished by delivery of writ to corporation's registered agent was valid. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

## **§ 16-543. Revival of judgment unnecessary.**

Attachment may be issued at any time during the life of the judgment, without issuing an order reviving the judgment previously thereto.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-543.

1973 Ed., § 16-543.

## CASE NOTES

## ANALYSIS

In general.

Issuance of writ.

Time for attachment.

**In general.**

Attachment and garnishment exists only by statute and it is the statute that determines the extent, nature and scope of the process. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Judgment creditor's inability to garnish wages of judgment debtor who was a federal employee until effective date of act allowing garnishment of wages to enforce legal obligation to provide child support had no effect upon life of judgments upon which judgment creditor ultimately sought to execute and no effect upon necessity to revive judgment prior to issuing writ of execution. D.C. Code §§ 15-101, 15-302, 15-305, 16-543; Social Services Amendments of 1974, § 459, 88 Stat. 2337. *Lomax v. Spriggs*,

404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

**Issuance of writ.**

Service of writ upon employer by judgment debtor did not purport to disburse wages of debtor to judgment creditor but required employer to pay certain wages to clerk of court pending decision as to disbursement of funds to judgment creditor; thus, writ was not a writ of execution but a writ of attachment such that three-year period relating to issuance of writ of execution was irrelevant to issue of whether writ of attachment properly issued. D.C. Code §§ 15-302, 15-305, 16-543. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

**Time for attachment.**

Essentially no limit is fixed on time for attachment in anticipation of satisfaction of viable claim. D.C. Code §§ 16-501, 16-543. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

**§ 16-544. Property subject to attachment.**

An attachment may be levied upon the judgment debtor's goods, chattels, and credits.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-544. 1973 Ed., § 16-544.

## CASE NOTES

**In general.**

Garnishment may be used by a creditor to obtain satisfaction of the indebtedness out of credits of the debtor in the possession of the third person. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Attachment and garnishment exists only by statute and it is the statute that determines the extent, nature and scope of the process. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

**§ 16-545. Multiple attachments against same judgment debtor.**

Only one attachment upon goods, chattels, and credits of a judgment debtor may be satisfied at one time. Where more than one such attachment issued against the same judgment debtor is served on a garnishee the attachments shall be satisfied in the order in which they were served upon the garnishee. This section does not apply with respect to an attachment upon wages to which subchapter III of this chapter applies.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-545. 1973 Ed., § 16-545.

**CASE NOTES**

**In general.**

Investment partnership's lien created by writ of attachment against funds owing to debtor, despite senior lien of debtor's attorneys, was valid with respect to amounts in excess of

debtor's attorneys' claim, even though tax liens on debtor's assets might effectively preclude writ of attachment from being executed. *Goldsmith v. William S. Bergman Assocs.*, 708 A.2d 640, 1998 D.C. App. LEXIS 57 (1998).

**§ 16-546. Attachments of credits.**

An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-546. 1973 Ed., § 16-546.

**CASE NOTES**

**ANALYSIS**

Certainty of debt.  
Contract rights.  
Effectiveness of lien.  
Failure to answer writ.  
In general.  
Service of writ.

**Certainty of debt.**

Certainty of a noncontingent debt is determined by reference to existence of precise and definite standards by which amount of debt might be determined; if amount of debt becomes fixed, however, only upon acceptance of performance satisfactory to obligee, or upon exercise of judgment, discretion, or opinion, as distinguished from mere calculation or computation, then amount of debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia*, 393 A.2d 68, 1978 D.C. App. LEXIS 337 (1978).

**Contract rights.**

Contract rights which are to become due only upon passage of time or upon happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia*, 393 A.2d 68, 1978 D.C. App. LEXIS 337 (1978).

**Effectiveness of lien.**

Although steps in addition to serving writ of attachment may be required to obtain property of debtor held by a garnishee, judgment creditor has a valid lien as of date writ is served on garnishee. D.C. Code 1981, §§ 16-542, 16-546. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

Delaware chancery court's seizure and injunction order, which effectively appointed receiver for judgment debtor, an insurance company, did not divest lien which judgment creditor had obtained through its prior attachment of judgment debtor's funds held by bank; however, lien only applied to those funds held by bank on date writ of attachment was served and did not apply to any funds bank received thereafter. D.C. Code 1981, §§ 16-542, 16-546. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

**Failure to answer writ.**

A corporate garnishee's failure to answer a writ of attachment served upon its registered agent may prove fatal if a judgment of condemnation is subsequently sought and entered against it on behalf of the judgment creditor. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

**In general.**

A judgment creditor's garnishment of settlement proceeds was valid, even though the writ of attachment was issued day before the settlement where there was no other evidence of any other claims of procedural defects. D.C. Code 1981, § 16-546; Fed.R.Civ.Proc. Rule 69(a), 18 U.S.C. *Monarch Life Ins. Co. v. Elam*, 918 F.2d 201, 1990 U.S. App. LEXIS 19663 (C.A.D.C. 1990).

Garnishment may be used by a creditor to obtain satisfaction of the indebtedness out of credits of the debtor in the possession of the

third person. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

Attachment and garnishment exists only by statute and it is the statute that determines the extent, nature and scope of the process. *United States v. Thornton*, 672 F.2d 101, 1982 U.S. App. LEXIS 21826 (C.A.D.C. 1982).

#### **Service of writ.**

Creditor's prepetition writ of attachment upon Chapter 13 debtor's bank account was effective upon service under District of Columbia law, and thus, creditor did not violate automatic stay by failing to release writ of attachment against bank account postpetition and by obtaining order confessing judgment against funds postpetition. *Bankr.Code*, 11 U.S.C.

§ 362; D.C. Code 1981, § 16-546. *In re Oliver*, 186 B.R. 403, 1995 Bankr. LEXIS 1312 (1995).

A writ of attachment after judgment may be properly served on a corporate garnishee by delivering it to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Service of writ of attachment upon corporation accomplished by delivery of writ to corporation's registered agent was valid. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

### **§ 16-547. Retention of property or credits by garnishee.**

Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period the garnishee shall incur no liability whatsoever for the retention.

(Dec. 23, 1963, 77 Stat. 552, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-547. 1973 Ed., § 16-547.

### **§ 16-548. Attachment of judgments and money or property in hands of marshal.**

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that prescribed by section 16-546 upon the debtor owing the debts.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do.

(Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-548. 1973 Ed., § 16-548.

### **§ 16-549. Attachment of money or property in hands of executor or administrator.**

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property

in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled.

(Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(2).)

**Prior Codifications.** — 1981 Ed., § 16-549. 1973 Ed., § 16-549.

## § 16-550. Preservation of property; sale.

The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

(Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-550. 1973 Ed., § 16-550.

## § 16-551. Defending against the attachment; trial of issues.

A garnishee or stranger to the action who may make claim to the property attached may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact thereby made may be tried with a jury if any party so desires.

(Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-551. 1973 Ed., § 16-551.

### CASE NOTES

#### **In general.**

Allegations of judgment debtor's son, that funds in debtor's bank account were really being held in trust for son, were sufficient to state claim in judgment creditor's action to attach funds in execution of consent judgment. D.C. Code 1981, § 16-551; Civil Rule 12(b)(6). *Quander v. Dow*, 721 A.2d 977, 1998 D.C. App. LEXIS 232 (1998).

Party which asserted that funds subject to attachment belonged to a third party and not to it could not assert ownership of the funds in order to obtain a hearing and then defend

against the attachment by asserting that it did not own those funds. D.C. Code 1981, § 16-551. *Visions Foundation, Inc. v. Falcon Color, Inc.*, 606 A.2d 1027, 1992 D.C. App. LEXIS 112 (1992).

Party which admitted that it had no interest or claim in funds was barred not only from filing of answer to attachment but also from filing any pleading in garnishment action. D.C. Code 1981, §§ 16-551, 16-554. *Visions Foundation, Inc. v. Falcon Color, Inc.*, 606 A.2d 1027, 1992 D.C. App. LEXIS 112 (1992).

## § 16-552. Interrogatories to garnishee; oral examination.

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules



or special order of the court, to be served upon any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers, verified by a written declaration that the answers are made under the penalties of perjury, to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(c) Whoever willfully makes and subscribes a return, statement, or other document, pursuant to this section, that contains, or is verified by, a written declaration that it is made under the penalties of perjury, and that he does not believe to be true and correct as to every material matter, is subject to the penalties prescribed for perjury.

(Dec. 23, 1963, 77 Stat. 553, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-552. 1973 Ed., § 16-552.

### CASE NOTES

#### ANALYSIS

Failure to answer.  
In general.  
Standing.

#### Failure to answer.

A corporate garnishee's failure to answer a writ of attachment served upon its registered agent may prove fatal if a judgment of condemnation is subsequently sought and entered against it on behalf of the judgment creditor. D.C. Code 1981, §§ 16-501 to 16-584; Civil Rule 4(d)(3). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Judgment of condemnation may be entered if garnishee either fails to answer interrogatories accompanying writ of attachment or fails to show cause why judgment should not be entered; in either instance, critical factor for Court of Appeals to consider in reviewing trial court's exercise of discretion is whether garnishee was in fact indebted to judgment debtor or possessed any property belonging to the debtor. D.C. Code 1981, § 16-556(b). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Where garnishee appeared and opposed, on jurisdictional grounds, judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer, and where garnishee alleged that nothing was owed to

judgment debtor when writs were received and that judgment debtor thereafter left his job with garnishee, judgment of recovery should not be entered if, on further proceedings, it were shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. D.C. Code §§ 16-552(a), 16-556(b), 16-573(a)(1, 2), 17-306, 29-933i(c). *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, 256 A.2d 913, 1969 D.C. App. LEXIS 323 (App. 1969).

#### In general.

Writ of garnishment will reach sums which garnishee unconditionally owes to debtor at time writ is served for which garnishee has not yet posted to debtor's account. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

Writ of garnishment covers only property of debtor in hands of garnishee at time writ is served. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

#### Standing.

Investment company could not establish standing to assert claim against assets in federal civil forfeiture proceedings on grounds that it held purported writ of attachment under District of Columbia law against specific assets held by garnishee trust pursuant to company's

prior action against trust; company never moved for or obtained entry of judgment against trust in connection with writ of attachment following trust's failure to respond to interrogatories served with writ, as required by District of Columbia law to secure company's

alleged interest in assets, and purported writ of attachment thereby was effectively dismissed. *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 772 F.Supp.2d 191, 2011 U.S. Dist. LEXIS 31193 (2011).

### § 16-553. Traverse of garnishee's answers; trial of issue; costs and attorney's fee.

If a garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's judgment, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16-551. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding.

(Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-553. 1973 Ed., § 16-553.

#### CASE NOTES

##### **Construction and application.**

A "traverse" for purposes of statute entitling garnishee to attorney fees if the plaintiff traverses the garnishee's answer as to the existence or amount of property or credits and a judgment is rendered for the garnishee is the statutory challenge to the accuracy and/or veracity of a garnishee's answers to interrogatories that accompany writs of attachment. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

Judgment creditor's show-cause motion

against garnishee, judgment debtor's attorney, was not a "de facto traverse" for purposes of statute entitling garnishee to attorney fees if the plaintiff traverses the garnishee's answer as to the existence or amount of property or credits and a judgment is rendered for the garnishee; the motion did not constitute a challenge to the veracity or accuracy of the garnishee's answers to interrogatories. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

### § 16-554. Claims to attached property.

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same. The court, without other pleadings, shall try the issues raised by the claim, with a jury if either party so requests, and may make all orders necessary to protect any rights of the claimant.

(Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-554. 1973 Ed., § 16-554.

## CASE NOTES

**In general.**

While anyone claiming an interest in attached property has a right to intervene under District of Columbia law, a debtor whose bank accounts are attached cannot assert in defense that the funds are in fact held by the debtor as trustee for another. D.C. Code 1981, § 16-554. *Monarch Life Ins. Co. v. Elam*, 918 F.2d 201, 1990 U.S. App. LEXIS 19663 (C.A.D.C. 1990).

Party which admitted that it had no interest or claim in funds was barred not only from filing of answer to attachment but also from filing any pleading in garnishment action. D.C. Code 1981, §§ 16-551, 16-554. *Visions Foundation, Inc. v. Falcon Color, Inc.*, 606 A.2d 1027, 1992 D.C. App. LEXIS 112 (1992).

## § 16-555. Condemnation and sale of property; proceeds of sale under interlocutory order.

Where the attachment has been levied upon specific property, on the return by the marshal, judgment of condemnation of the property may be entered, and as much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a *fiери facias*. If the property was sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court.

(Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

**Cross references.** — Decrees, effect and enforcement, see §§ 15-103 et seq., 15-301, and 16-541.

**Prior Codifications.** — 1981 Ed., § 16-555. 1973 Ed., § 16-555.

## § 16-556. Judgment against garnishee.

(a) Subject to the provisions of subchapter III of this chapter, if a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution may be had thereon.

(Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-556. 1973 Ed., § 16-556.

## CASE NOTES

## ANALYSIS

Attachment after judgment.  
Certainty of debt.  
Contract rights.

Discretion of court.  
Failure to answer.  
Filing of judgment.  
In general.



Service of writ.

**Attachment after judgment.**

Rule relating to attachment after judgment applies to judgment of recovery against garnishees, on writs of attachment after judgment against property of judgment debtor other than wages, salary, and commissions, in aid of execution of that judgment, and, presumably, to all writs of attachment to which answers to interrogatories are due and not filed. D.C. Code SCR, Civil Rule 69-I(e); D.C. Code § 16-556. *Household Finance Corp. v. Training Research & Development, Inc.*, 316 A.2d 850, 1974 D.C. App. LEXIS 382 (1974).

**Certainty of debt.**

Certainty of a noncontingent debt is determined by reference to existence of precise and definite standards by which amount of debt might be determined; if amount of debt becomes fixed, however, only upon acceptance of performance satisfactory to obligee, or upon exercise of judgment, discretion, or opinion, as distinguished from mere calculation or computation, then amount of debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia*, 393 A.2d 68, 1978 D.C. App. LEXIS 337 (1978).

**Contract rights.**

Contract rights which are to become due only upon passage of time or upon happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia*, 393 A.2d 68, 1978 D.C. App. LEXIS 337 (1978).

**Discretion of court.**

Decision to enter judgment of condemnation lies in discretion of trial court, and is therefore reviewable for abuse of that discretion. D.C. Code 1981, § 16-556(b). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

**Failure to answer.**

Judgment creditor was not entitled to judgment of condemnation based upon failure of judgment debtor's employer to answer interrogatories set forth in writ of attachment directed to employer, where writ was not under seal and thus was defective. 18 U.S.C. §§ 1691, 1693; D.C. Code 1981, § 16-556(b). *Miles v. Gussin*, 104 B.R. 553, 1989 Bankr. LEXIS 1610 (1989).

Judgment of condemnation may be entered if garnishee either fails to answer interrogatories accompanying writ of attachment or fails to show cause why judgment should not be entered; in either instance, critical factor for Court of Appeals to consider in reviewing trial court's exercise of discretion is whether garnishee was in fact indebted to judgment debtor or possessed any property belonging to the

debtor. D.C. Code 1981, § 16-556(b). *Wrecking Corp. of America, Inc. v. Jersey Welding Supply, Inc.*, 463 A.2d 678, 1983 D.C. App. LEXIS 418 (1983).

Where garnishee appeared and opposed, on jurisdictional grounds, judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer, and where garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with garnishee, judgment of recovery should not be entered if, on further proceedings, it were shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. D.C. Code §§ 16-552(a), 16-556(b), 16-573(a)(1, 2), 17-306, 29-933i(c). *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, 256 A.2d 913, 1969 D.C. App. LEXIS 323 (App. 1969).

**Filing of judgment.**

Judgment creditor's garnishment and attachment against judgment debtor's attorney were dismissed by operation of law, where no judgment was applied for or entered within twenty-eight days after attorney filed answers to interrogatories, whether or not a judgment could have been entered. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

Judgment creditor's act of filing a judgment with recorder of deeds constitutes a lien on all freehold and leasehold estates, legal and equitable, of defendants bound by judgment. D.C. Code 1981, § 15-102(a). *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

**In general.**

Investment company could not establish standing to assert claim against assets in federal civil forfeiture proceedings on grounds that it held purported writ of attachment under District of Columbia law against specific assets held by garnishee trust pursuant to company's prior action against trust; company never moved for or obtained entry of judgment against trust in connection with writ of attachment following trust's failure to respond to interrogatories served with writ, as required by District of Columbia law to secure company's alleged interest in assets, and purported writ of attachment thereby was effectively dismissed. *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 772 F.Supp.2d 191, 2011 U.S. Dist. LEXIS 31193 (2011).

Writ of garnishment will reach sums which garnishee unconditionally owes to debtor at time writ is served for which garnishee has not yet posted to debtor's account. *Consumers*

United Ins. Co. v. Smith, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

Writ of garnishment covers only property of debtor in hands of garnishee at time writ is served. Consumers United Ins. Co. v. Smith, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

#### **Service of writ.**

Service of writ on garnishee creates a valid

lien in favor of judgment creditor on a debtor's property held by garnishee. D.C. Code 1981, § 16-542. Consumers United Ins. Co. v. Smith, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

### *Subchapter III. Attachment and Garnishment of Wages, etc.*

## **§ 16-571. Definitions.**

For purposes of this subchapter —

(1) The term “wages” means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) The term “disposable wages” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(3) The term “garnishment” means any legal or equitable procedure through which the wages of any individual are required to be withheld for payment of any debt.

(4) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 554, Pub. L. 88-241, § 1; Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 5; Apr. 4, 2006, D.C. Law 16-79, § 4(a), 53 DCR 1035.)

**Cross references.** — District of Columbia employees, attachment and garnishment of wages, see § 1-507.

Work release program participants, exemption of wages from attachment and garnishment, see § 24-241.06.

Child support enforcement, income withholding, see § 46-208.

District of Columbia fiscal management, capital improvements, authorization of lease-purchase financing, see § 1-204.90.

Fraudulent conveyances, remedies of creditors, see § 28-3107.

Seizures of personal property, exemptions, “earnings” defined, see § 15-503.

Superior Court of the District of Columbia, jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-571. 1973 Ed., § 16-571.

**Effect of amendments.** — D.C. Law 16-79 added par. (4).

**Legislative history of Law 16-79.** — Law 16-79, the “Domestic Partnership Equality Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

## **CASE NOTES**

### **Wages.**

Evidence sustained finding that box office receipts held by theater were not compensation for personal services of producer of play, and

thus were not “wages” that could not be attached; there was no employment contract between producer and theater and no evidence that wages were to be paid to producer under



production contract. D.C. Code 1981, § 16-571(1). *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

### § 16-571.01. Enforcement of support orders by attachment or garnishment.

Notwithstanding any other provision of this subchapter, a notice or order to withhold issued to enforce a support order pursuant to subchapter I of Chapter 2 of Title 46 shall have priority over any other legal process and shall be implemented according to the procedures, limitations, and requirements of subchapter I of Chapter 2 of Title 46.

(May 12, 2006, D.C. Law 16-100, § 2(b), 53 DCR 1886; Mar. 25, 2009, D.C. Law 17-353, § 111(a)(1), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 substituted “subchapter I of Chapter 2” for “Subchapter I of Chapter 2” and substituted “subchapter I of Chapter 2 of Title 46” for “the act”.

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 2(b) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary (90 day) addition, see § 2(a) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) addition, see § 2(b) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

**Legislative history of Law 16-100.** — Law

16-100, the “Income Withholding Transfer and Revision Amendment Act of 2005”, was introduced in Council and assigned Bill No. 16-319 which was referred to the committee on Judiciary. The Bill was adopted on first and second readings on January 4, 2006, and February 7, 2006, respectively. Signed by the Mayor on February 27, 2006, it was assigned Act No. 16-302 and transmitted to both Houses of Congress for its review. D.C. Law 16-100 became effective on May 12, 2006.

**Legislative history of Law 17-353.** — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

### § 16-572. Attachment of wages; percentage limitations; priority of attachments.

Notwithstanding any other provision of subchapter II of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

- (1) 25 per centum of his disposable wages that week, or
  - (2) the amount by which his disposable wages for that week exceed thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) in effect at the time the wages are payable,
- whichever is less. In the case of wages for any pay period other than a week, the Mayor of the District of Columbia shall by regulation prescribe a multiple



of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16-507.

(Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1; Dec. 17, 1971, 85 Stat. 678, Pub. L. 92-200, § 6; Apr. 30, 1988, D.C. Law 7-104, § 4(f), 35 DCR 147; Mar. 24, 1998, D.C. Law 12-81, § 10(d), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-572.  
1973 Ed., § 16-572.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-501.

## CASE NOTES

### ANALYSIS

Commissioned employees.  
Immunity.  
In general.  
Priority.  
Wages, generally.

### Commissioned employees.

Commissioned salespersons are entitled to same protections in garnishment as wage or salary employees. *Riggs Nat'l Bank v. Simplicio*, 114 WLR 653 (Super. Ct. 1986).

Under paragraph (1) of this section, an employer-garnishee real estate company was required to remit to its judgment debtor commissioned salesperson 75% of each commission that became due and owing to her, and to pay the remaining 25% to the judgment creditor. *Riggs Nat'l Bank v. Simplicio*, 114 WLR 653 (Super. Ct. 1986).

### Immunity.

Provision in articles of agreement of bank protected by International Organizations Immunities Act, waiving immunity for particular types of suit, did not waive immunity with respect to action to garnish wages of bank employee; waiver of immunity from garnishment proceedings would provide no conceivable benefit in attracting talented employees. *International Organizations Immunities Act*, § 2(b), 22 U.S.C. § 288a(b). *Atkinson v. Inter-American Development Bank*, 156 F.3d 1335, 1998 U.S. App. LEXIS 24915 (C.A.D.C. 1998).

Even if reference in International Organizations Immunities Act (IOIA) to law of immunity of foreign sovereigns was an evolving one that incorporated commercial activities exception to immunity, action by former wife to garnish wages of former husband who was employee of bank protected by Act did not come within that exception; employee's desertion of his wife and resulting grant of divorce did not relate to commercial activity of bank. 18 U.S.C. § 1604; *International Organizations Immunities Act*, § 2(b), 22 U.S.C. § 288a(b). *Atkinson v. Inter-American Development Bank*, 156 F.3d 1335, 1998 U.S. App. LEXIS 24915 (C.A.D.C. 1998).

### In general.

Attachment of wages before judgment was not illegal where all requirements for garnishment were met. D.C. Code 1961, § 16-501. *Smith v. First Nat'l Bank*, 220 A.2d 333, 1966 D.C. App. LEXIS 189 (App. 1966).

### Priority.

Automatic stay provision of Bankruptcy Code did not act to extinguish all previously issued writs of attachment on debtor's wages and did not give priority to first attachment filed after debt was determined to be nondischargeable by Bankruptcy Court; rather, stay only required immediate cessation of payments to each garnishor, and thus, writ filed first in time before bankruptcy continued to have priority. D.C. Code 1981, § 16-572; Bankr.Code, 11

U.S.C. § 362. *Rab v. Safeco Ins. Co.*, 556 A.2d 1072, 1989 D.C. App. LEXIS 56 (1989).

**Wages, generally.**

Debtor's right to unpaid wages becomes property of the estate upon the filing of bankruptcy petition without necessity of invocation of any procedure requiring employer to withhold wages for payment of any debt; bankruptcy did not operate as attachment on behalf of judgment creditor and was not a garnishment, for purpose of District of Columbia statute limiting extent to which attachment became a lien or levy on wages owed to debtor while those wages were in hands of debtor's employer. In re *Mordkin*, 452 B.R. 311, 2011 Bankr. LEXIS 3605 (2011).

Evidence sustained finding that box office receipts held by theater were not compensation for personal services of producer of play, and thus were not "wages" that could not be at-

tached; there was no employment contract between producer and theater and no evidence that wages were to be paid to producer under production contract. D.C. Code 1981, § 16-571(1). *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

Debtor waived argument, first raised on appeal, that writ of attachment did not comport with statutory requirements, though debtor filed trial court motion to release excess "wages" and property and filed counterclaim challenging attachment as excessive, as motion and counterclaim did not make the argument regarding statutory requirements, and debtor had not availed herself of statutory remedies available at time of attachment or during seven years leading to trial. D.C. Code 1981, §§ 16-501(d)(1, 3), 16-509. *Corto v. National Scenery Studios*, 705 A.2d 615, 1997 D.C. App. LEXIS 232 (1997).

**§ 16-573. Employer's duty to withhold and make payments; percentage.**

(a) Except as provided in subsection (b) of this section, an employer upon whom an attachment is served, and who:

(1) at the time is indebted for wages to an employee who is the judgment debtor named in the attachment; or

(2) becomes so indebted to the judgment debtor in the future — shall, while the attachment remains a lien upon such indebtedness, withhold and pay to the judgment creditor, or his legal representative, within 15 days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until the attachment is wholly satisfied.

(b) Upon written notice of any court proceeding attacking the attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings.

(c) Any payments made by an employer-garnishee in conformity with this section shall be a discharge of the liability of the employer to the judgment debtor to the extent of the payment.

(d) Under this section the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$200, nor more than 20 per centum of the gross wages in excess of \$200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$500.



(Dec. 23, 1963, 77 Stat. 555, Pub. L. 88-241, § 1; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(1), 33 DCR 6710; May 12, 2006, D.C. Law 16-100, § 2(c), 53 DCR 1886.)

**Prior Codifications.** — 1981 Ed., § 16-573. 1973 Ed., § 16-573.

**Effect of amendments.** — D.C. Law 16-100, in subsec. (b), deleted “; except that, in the case of child support judgments, the employer shall continue to withhold the payments from the judgment debtor until receipt of an order of the court terminating the withholding” following “proceedings”.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(c) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(c) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(c) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

**Legislative history of Law 6-166.** — Law 6-166, the “District of Columbia Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.

## CASE NOTES

### ANALYSIS

Duty to withhold.  
Failure to answer.  
Failure to withhold.  
Federal employees.  
In general.

### Duty to withhold.

Under District of Columbia law, employer upon whom writ of attachment is served and who receives written notice of any court proceeding attacking attachment or judgment on which it is based is required to continue to withhold payments from judgment debtor, even though it is no longer permitted to make payments to judgment creditor. D.C. Code 1981, § 16-573(a, b). *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

### Failure to answer.

Where garnishee appeared and opposed, on jurisdictional grounds, judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer, and where garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with garnishee, judgment of recovery should not be entered if, on further proceedings, it were shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's

employment and if there were otherwise cause to permit answer to be filed. D.C. Code §§ 16-552(a), 16-556(b), 16-573(a)(1, 2), 17-306, 29-933i(c). *Metropolitan Roofing & Sheet Metal Co. v. Franklin Inv. Co.*, 256 A.2d 913, 1969 D.C. App. LEXIS 323 (App. 1969).

### Failure to withhold.

Under District of Columbia law, employer who fails to withhold monies from its employee's wages pursuant to garnishment order after receiving notice of employee's motion to quash garnishment becomes liable to judgment creditor for failing to meet its obligation. D.C. Code 1981, §§ 16-573, 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

Under District of Columbia law, private employer is liable to creditor for amount it fails to withhold from judgment debtor's wages prior to final disposition of motion to quash garnishment. D.C. Code 1981, §§ 16-573, 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

United States Department of State, as employer, was liable to creditor of former Department employee for failing to withhold employee's wages under writ of garnishment until employee's motion to quash garnishment was resolved on merits; failure to withhold such



sums was breach of statutory obligation and rendered federal government liable for amount it wrongly failed to withhold. 5 U.S.C. §§ 5520a, 5520a(a)(3), 5520a(b, g); 5 C.F.R. §§ 582.101, 582.305(g); D.C. Code 1981, §§ 16-573(a, b), 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

**Federal employees.**

Federal government may exact fees from creditors for administrative costs incurred incident to garnishment actions involving federal employee, even if District of Columbia law requires employer to withhold and pay to creditor a percentage of employee's wages until

"attachment is wholly satisfied"; legal process to which federal agency is subject must comply with all provisions of federal garnishment law, including provision that imposes administrative costs upon creditors. 5 U.S.C. § 5520a(j)(2); D.C. Code 1981, § 16-573(a), (a)(2). *Hadley Mem. Hosp. v. Kynard*, 981 F. Supp. 690, 1997 U.S. Dist. LEXIS 18025 (1997).

**In general.**

Garnishee is not party to judgment and acts at his peril if he withholds too much or too little. D.C. Code §§ 16-573, 16-575; D.C. Code SCR, Civil Rule 69-II(c). *Landahl, Brown & Weed, Associates, Inc. v. Houston*, 404 A.2d 934, 1979 D.C. App. LEXIS 451 (1979).

**§ 16-574. Judgment creditor to file receipts, in court, of amount collected.**

(a) The judgment creditor shall:

(1) file with the clerk of the court, every three months after the serving of an attachment upon an employer-garnishee, a receipt showing the amount received and the balance due under the attachment as of the date of filing;

(2) file a final receipt with the court and furnish a copy thereof to the employee-garnishee; and

(3) obtain a vacation of the attachment within 20 days after the attachment has been satisfied.

(b) If the judgment creditor fails to file any of the receipts prescribed by subsection (a) of this section, an interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee suffered by, and tax costs in favor of, the party filing the motion to compel the accounting.

(Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-574. 1973 Ed., § 16-574.

**§ 16-575. Judgment against employer-garnishee for failure to pay percentages.**

If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs.

(Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-575. 1973 Ed., § 16-575.

## CASE NOTES

## ANALYSIS

Failure to withhold, generally.  
Federal employers.  
In general.  
Language in writ.  
Notice of amount due.

**Failure to withhold, generally.**

Under District of Columbia law, employer who fails to withhold monies from its employee's wages pursuant to garnishment order after receiving notice of employee's motion to quash garnishment becomes liable to judgment creditor for failing to meet its obligation. D.C. Code 1981, §§ 16-573, 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

Under District of Columbia law, private employer is liable to creditor for amount it fails to withhold from judgment debtor's wages prior to final disposition of motion to quash garnishment. D.C. Code 1981, §§ 16-573, 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

Where judgment creditor served writ of attachment on judgment debtor's employer which answered one of the interrogatories in the writ by stating amount of judgment debtor's bi-weekly gross wages and biweekly disposable earnings, failure of employer to continue to remit percentages of employee's wages as prescribed on writ of attachment entitled judgment creditor to judgment against employer. D.C. Code §§ 16-574 to 16-576; D.C. Code SCR, Civil Rules 69-I(e), 69-II. *Household Finance Corp. v. Training Research & Development, Inc.*, 316 A.2d 850, 1974 D.C. App. LEXIS 382 (1974).

**Federal employers.**

Federal statute subjecting federal employee's pay to same legal process as if employing agency were private entity did not permit judgment creditor of federal employee to recover damages against United States for its failure to garnish employee's wages under laws of District of Columbia, despite District of Columbia provision making private employers strictly liable for wrongfully failing to pay judgment creditor portion of wages subject to garnishment; federal statute only made employee's pay

subject to legal process, and did not subject United States to damage actions. 5 U.S.C. § 5520a(b); D.C. Code 1981, § 16-575. *First Va. Bank v. Randolph*, 110 F.3d 75, 1997 U.S. App. LEXIS 6655 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 1075, 118 S. Ct. 851, 139 L. Ed. 2d 752, 1998 U.S. LEXIS 478, 66 U.S.L.W. 3472 (1998).

United States Department of State, as employer, was liable to creditor of former Department employee for failing to withhold employee's wages under writ of garnishment until employee's motion to quash garnishment was resolved on merits; failure to withhold such sums was breach of statutory obligation and rendered federal government liable for amount it wrongly failed to withhold. 5 U.S.C. §§ 5520a, 5520a(a)(3), 5520a(b, g); 5 C.F.R. §§ 582.101, 582.305(g); D.C. Code 1981, §§ 16-573(a, b), 16-575. *First Va. Bank v. Randolph*, 920 F. Supp. 213, 1996 U.S. Dist. LEXIS 3946 (1996), reversed by 110 F.3d 75, 324 U.S. App. D.C. 29, 1997 U.S. App. LEXIS 6655 (1997).

**In general.**

Garnishee is not party to judgment and acts at his peril if he withholds too much or too little. D.C. Code §§ 16-573, 16-575; D.C. Code SCR, Civil Rule 69-II(c). *Landahl, Brown & Weed, Associates, Inc. v. Houston*, 404 A.2d 934, 1979 D.C. App. LEXIS 451 (1979).

**Language in writ.**

Language in writ of attachment that "Accruing interest will increase [amount of judgment] in the future. . . Before ceasing to withhold any disposable wages, under this attachment, it is suggested that you communicate with [judgment creditor] or his attorney to ascertain that the judgment has been completely satisfied" was not in form of order and did not subject garnishee to liability under statute, and thus the garnishee was not liable for his failure to withhold wages for amount of accrued interest allegedly due following withholding of amount shown on the writ as "total balance due." D.C. Code § 16-575. *Landahl, Brown & Weed, Associates, Inc. v. Houston*, 404 A.2d 934, 1979 D.C. App. LEXIS 451 (1979).

**Notice of amount due.**

Burden equitably rests on judgment creditor to calculate and inform the garnishee of exact amount due. D.C. Code § 16-575; D.C. Code SCR, Civil Rule 69-II(c). *Landahl, Brown & Weed, Associates, Inc. v. Houston*, 404 A.2d 934, 1979 D.C. App. LEXIS 451 (1979).



**§ 16-576. Lapse of attachment upon resignation or dismissal of employee.**

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made thereon unless the judgment debtor is reinstated or reemployed within 90 days after the resignation or dismissal.

(Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-576. 1973 Ed., § 16-576.

**§ 16-577. Applicability of per centum limitations to judgment for support.**

The per centum limitations prescribed by section 16-572 do not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's spouse or former spouse, domestic partner or former domestic partner, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month, except that a notice or order to withhold issued pursuant to subchapter I of Chapter 2 of Title 46 shall have priority over any other legal process and shall be subject to the limitations stated in section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

(Dec. 23, 1963, 77 Stat. 556, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 13, 23 DCR 2544; Apr. 4, 2006, D.C. Law 16-79, § 4(b), 53 DCR 1035; May 12, 2006, D.C. Law 16-100, § 2(d), 53 DCR 1886; Mar. 25, 2009, D.C. Law 17-353, § 111(a)(2), 56 DCR 1117.)

**Prior Codifications.** — 1981 Ed., § 16-577. 1973 Ed., § 16-577.

**Effect of amendments.** — D.C. Law 16-79 substituted "a person's spouse or former spouse, domestic partner or former domestic partner, or children," for "a person's spouse, or former spouse, or children,".

D.C. Law 16-100 substituted " , except that a notice or order to withhold issued pursuant to Subchapter I of Chapter 2 of Title 46 shall have priority over any other legal process and shall be subject to the limitations stated in section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b))." for the period at the end of the second sentence.

D.C. Law 17-353 substituted "subchapter I of Chapter 2" for "Subchapter I of Chapter 2".

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(d) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(d) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(d) of Income Withholding Transfer and Revision Congressional Review Emergency



Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

**Legislative history of Law 1-87.** — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it

was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-578. Superior Court judgments; lapse; validity.

An attachment issued by the Superior Court of the District of Columbia upon a judgment of that court duly filed and recorded, and levied within twelve years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15-101.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(3)(A), (b)(4).)

**Prior Codifications.** — 1981 Ed., § 16-578. 1973 Ed., § 16-578.

## § 16-579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered.

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that the salary or compensation is merely colorable and designed to defraud or impede the creditors of the debtor, the court may direct the employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by the judgment debtor under his employment or upon the debtor's then earning ability.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-579. 1973 Ed., § 16-579.

### CASE NOTES

#### ANALYSIS

Automatic stay.  
Construction and application.  
Evidence.  
In general.  
Presumptions and burden of proof.  
Purpose.  
Reasonable value of services.

#### Automatic stay.

Actions on part of judgment creditor of debtor-employee, in pursuing debtor's employer for payments equal to reasonable value of debtor's services, pursuant to District of Columbia statute authorizing such relief when employer is relative of or controlled by relative of employee, and when employee is working for free or for grossly inadequate salary, were not, with re-

gard to reasonable value of services which debtor provided prepetition, either the "continuation of a proceeding to recover a claim against the debtor that arose before the commencement of the case" or "enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case," or "act to collect or recover a claim against the debtor that arose before the commencement of the case," and did not violate automatic stay; cause of action was effectively against corporate treasury of debtor's employer, which was enriched by virtue of debtor's having worked for free, and was analogous to cause of action against guarantor of debtor's debt, the position that employer was statutorily made to occupy pursuant to District of Columbia statute. In re Bowers, 424 B.R. 594, 2010 Bankr. LEXIS 677 (2010).

Automatic stay applied to prevent judgment creditor of debtor-employee from pursuing debtor's employer for payments equal to reasonable value of debtor's services, pursuant to District of Columbia statute authorizing such relief when employer is relative of or controlled by relative of employee, and when employee is working for free or for grossly inadequate salary, at least with respect to services of debtor that were rendered after the filing of petition. In re Bowers, 424 B.R. 594, 2010 Bankr. LEXIS 677 (2010).

### Construction and application.

Regardless of whether stay applied to prevent judgment creditor of debtor-employee from pursuing debtor's employer for payments equal to reasonable value of debtor's prepetition services, pursuant to District of Columbia statute authorizing such relief when employer is relative of or controlled by relative of employee, and when employee is working for free or for grossly inadequate salary, judgment creditor's pursuit of such relief did not violate any unambiguous provision of stay statute clearly applicable to its conduct, as required to support contempt finding against judgment creditor. In re Bowers, 424 B.R. 594, 2010 Bankr. LEXIS 677 (2010).

Calculating corporate garnishee's monthly payments by using judgment debtor's gross earnings for two years and, after averaging them, dividing that figure by 12 and ordering a monthly levy of \$1,500 against corporation reasonably applied statute permitting garnishment of family corporations. D.C. Code 1981, § 16-579. IBF Corp. v. Alpern, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

### Evidence.

Evidence in garnishment proceeding against family corporation supported finding that judgment debtor, who was president of corporation at no salary for an extended period of time, had rendered services to corporation and was enti-

tled to corresponding benefits, thus justifying judgment creditor's piercing of the corporate veil in reverse. D.C. Code 1981, § 16-579. IBF Corp. v. Alpern, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

Evidence supported finding that judgment debtor rendered services to family corporation in that he was corporate president, held himself out as a corporate employee by virtue of his business card, regularly used corporate office space for which he paid no rent but for which he deducted rental payments as a business expense on his personal income tax returns, received his mail at corporate office, and relied on corporate answering service. D.C. Code 1981, § 16-579. IBF Corp. v. Alpern, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

### In general.

Judgment creditor of debtor-priest could not compel payments from garnishee-religious institute, where creditor did not show that garnishee was liable to debtor, even though debtor rendered services to garnishee, and even though garnishee took care of debtor's expenses, paid his bills, and provided him with pocket money. D.C. Code 1981, § 16-579. Phillips v. Sugrue, 886 F. Supp. 63, 1995 U.S. Dist. LEXIS 6901 (1995).

Since judgment against debtor, the president of a family corporation against which garnishment proceeding was brought, substantially predated any business expenses that would offset current corporation debtor income, it was equitable to deem the corporation accountable to judgment creditor off the top, rather than to subordinate that debt to claims of more recent suppliers. D.C. Code 1981, § 16-579. IBF Corp. v. Alpern, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

### Presumptions and burden of proof.

Judgment creditor was not required to prove that the financial arrangements between company that employed judgment debtor and judgment debtor were designed to defraud or impede debtor's creditors in order to obtain a writ of attachment pursuant to statute regarding payments by an employer-garnishee when an employee had no salary or the salary was inadequate for the services rendered, where debtor, who was a shareholder in the closely held corporation, received no salary from company for the services he performed. Goldschmidt v. Paley, Rothman, Goldstein, Rosenberg & Cooper, Chtd., 935 A.2d 362, 2007 D.C. App. LEXIS 659 (2007).

### Purpose.

Statute permitting garnishment of family or other close corporations was designed to permit a levy against the corporate fisc when a debtor who renders services to the corporation takes inadequate, if any, compensation, presumably



leaving his or her money in the corporation, in order to defraud or otherwise impede personal creditors. D.C. Code 1981, § 16-579. *IBF Corp. v. Alpern*, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

**Reasonable value of services.**

In determining reasonable value of services rendered by judgment debtor under his employment with family corporation, amount of compensation debtor actually received from the corporation by way of rental payments for his office, for which he took a business rent deduction, served as floor for reasonable value of his services. D.C. Code 1981, § 16-579. *IBF Corp. v. Alpern*, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

"Reasonable value" of services rendered by judgment debtor under his employment may be determined by market value, actual value of services to employer, or amount actually received by employee; however, compensation actually received may serve only as a floor for reasonable value, since it could reflect substantial underpayment. D.C. Code 1981, § 16-579. *IBF Corp. v. Alpern*, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

When there is no contractual provision for amount of compensation for labor, person performing work is entitled to recover "reasonable value" of services. D.C. Code 1981, § 16-579. *IBF Corp. v. Alpern*, 487 A.2d 593, 1985 D.C. App. LEXIS 312 (1985).

## § 16-580. Quashing attachment where judgment obtained to hinder just claims.

Where an attachment levied under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of an interested person, may quash the attachment upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-580. 1973 Ed., § 16-580.

## § 16-581. Rules of procedure.

The judges of the Superior Court of the District of Columbia and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(b)(5).)

**Prior Codifications.** — 1981 Ed., § 16-581. 1973 Ed., § 16-581.

### CASE NOTES

**In general.**

In view of fact that only connection suit on note had with District of Columbia courts was that garnishee, the defendant's employer, had a resident agent in the District of Columbia upon whom service of writ of garnishment was obtained, doctrine of forum non conveniens was

applicable and could properly be used to quash prejudgment writ of attachment. Superior Court Civil Rules, rule 64-I; D.C. Code §§ 16-519, 16-581. *Midland Finance of Cumberland v. Green*, 279 A.2d 518, 1971 D.C. App. LEXIS 175 (1971).



## § 16-582. Attachments to which this subchapter is applicable.

This subchapter applies only with respect to attachments upon wages, as defined by section 16-571, issued on or after 60 days from August 4, 1959. Unless otherwise specified, this subchapter does not apply to notices or orders to withhold issued pursuant to subchapter I of Chapter 2 of Title 46.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; May 12, 2006, D.C. Law 16-100, § 2(e), 54 DCR 1886; Mar. 25, 2009, D.C. Law 17-353, § 111(a)(3), 56 DCR 1117.)

**Prior Codifications.** — 1981 Ed., § 16-582. 1973 Ed., § 16-582.

**Effect of amendments.** — D.C. Law 16-100 added “Unless otherwise specified, this subchapter does not apply to notices or orders to withhold issued pursuant to Subchapter I of Chapter 2 of Title 46.” to the end.

D.C. Law 17-353 substituted “subchapter I of Chapter 2” for “Subchapter I of Chapter 2”.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(e) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(e) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(e) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-583. No garnishment before judgment.

(a) Except as otherwise provided in the District of Columbia Child Support Enforcement Amendment Act of 1985 or as provided in the D.C. Official Code, section 16-916, before entry of a judgment in an action against a debtor, the creditor may not obtain an interest in any property of the debtor by attachment, garnishment, or like proceedings.

(b) The holder who is served an order of withholding under this subchapter may deduct and retain from the obligor’s earnings or other income an additional \$2.00 over the withholding amount for expenses incurred as a result of the withholding.

(Dec. 17, 1971, 85 Stat. 679, Pub. L. 92-200, § 7; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(2), 33 DCR 6710.)

**Prior Codifications.** — 1981 Ed., § 16-583. 1973 Ed., § 16-583.

**Legislative history of Law 6-166.** — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 16-573.

**References in text.** — The “District of Columbia Child Support Enforcement Amendment Act of 1985,” referred to in subsection (a), is D.C. Law 6-166 which is codified principally as § 46-201 et seq.

### CASE NOTES

#### Construction and application.

Earnings withholding order issued by California Franchise Tax Board (CFTB), as a creditor, was functionally indistinguishable from a

judgment of a court of law, for purposes of District of Columbia statute providing that before entry of judgment in action against a debtor, a creditor may not obtain an interest in

any property of debtor by attachment, garnishment, or like proceedings. McDonald v. American Red Cross, 505 F.Supp.2d 143, 2007 U.S. Dist. LEXIS 64703 (2007).

**§ 16-584. No discharge from employment for garnishment.**

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment.

(Dec. 17, 1971, 85 Stat. 679, Pub. L. 92-200, § 7.)

**Prior Codifications.** — 1981 Ed., § 16-584. 1973 Ed., § 16-584.

CHAPTER 6. BONDS AND UNDERTAKINGS.

Sec.

16-601. Undertaking in lieu of fiduciary's bond.

§ 16-601. Undertaking in lieu of fiduciary's bond.

A bond required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or other fiduciary appointed or confirmed by the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, or a bond required from a party to a cause or proceeding pending in that court, shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises; and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court directs and the court may give judgment thereon in favor of any person thereby aggrieved against the principal and sureties for the damages sustained by him, and that judgment may be rendered against all or any of the parties whose names are thereto signed.

The United States District Court for the District of Columbia (as specified in section 11-501) and the Superior Court of the District of Columbia (as specified in section 11-921) have jurisdiction to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon the undertaking, as law and justice require. This section does not deprive a party having a claim or cause of action under or upon the undertaking from electing to pursue his ordinary remedy by civil suit.

The provisions of this Code relating to actions, remedies and proceedings upon bonds of fiduciaries apply to such undertakings to the same extent as if undertaking had been expressly mentioned and referred to therein.

(Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(c)(1); July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(c).)

**Prior Codifications.** — 1981 Ed., § 16-601. 1973 Ed., § 16-601.

CASE NOTES

ANALYSIS

In general.  
Misappropriation of funds.  
Order confirming auditor's report.

**In general.**

Under statute providing for entry of judgment against trustee and surety upon default by principal in any of conditions of undertaking

or bond, judgment may be entered, upon motion, in action in which undertaking is filed, as an alternative to an independent action. D.C. Code § 16-201. *Schilt v. Duvall*, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

Where trustee transfers property to himself in another capacity in accordance with his duty or authority, trustee's surety is not liable for subsequent defalcations. D.C. Code § 16-201.



Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

#### **Misappropriation of funds.**

Where pleadings filed in connection with motion to surcharge trustee and surety for trustee's alleged misappropriation of trust funds showed a misappropriation and a prior default under terms of prior court orders, movant was entitled to judgment on pleadings, but where pleadings did not indicate final amount of the misappropriations, including interest due, proceeding must be remanded. U.S. Dist. Ct. Rules Dist. of Col., General Rule 22(g). Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

Where all of defaults on part of trustee occurred subsequent to period governed by auditor's report, guardian which moved to surcharge trustee and her surety for trustee's alleged misappropriation of trust funds of minor beneficiary was not required to seek to set aside the auditor's report. U.S. Dist. Ct. Rules Dist. of Col., General Rule 22(g); D.C. Code § 16-201. Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

Where trustee of minor's estate failed to transfer assets to herself in her capacity as guardian as required by law and express order of court, but instead had trust funds withdrawn from trust account paid to her individually or to her credit in Totten trust, such was a misappropriation of trust funds and constituted prior

defaults for which trustee's surety was liable. D.C. Code § 16-201. Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

In proceeding to surcharge trustee and surety for trustee's alleged misappropriation of trust funds, wherein defendant surety did not deny authenticity of any of documents or deny any of statement of fact set out in motion or in the documents and district court order recited that it was based upon consideration of pleadings filed, court gave judgment on the pleadings and it was not necessary for movant, successor guardian of estate of minor, to offer the documents into evidence. Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

#### **Order confirming auditor's report.**

Trustee and her surety were not discharged from liability by order confirming auditor's report and certificate of distribution and settlement filed by trustee, where the audit covered final account for period ending on date that funds were still properly on deposit in bank and all of defaults occurred subsequent to period covered by report, but prior to filing of the report, and order confirming auditor's report did not become "res judicata". U.S. Dist. Ct. Rules Dist. of Col., General Rule 22(g); D.C. Code § 16-201. Schilt v. Duvall, 479 F.2d 1228, 1973 U.S. App. LEXIS 9709 (C.A.D.C. 1973).

## CHAPTER 7. CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT.

Sec.

- 16-701. Rules and regulations.
- 16-702. Prosecution by indictment or information.
- 16-703. Process of Criminal Division; fees.
- 16-704. Bail; collateral security.
- 16-705. Jury trial; trial by court.
- 16-706. Enforcement of judgments; commitment upon non-payment of fine.
- 16-707. Disposition of fines.
- 16-708. Penalties for wrongful conversion of forfeitures and fines.

Sec.

- 16-709. Executions on forfeited recognizances and judgments.
- 16-710. Suspension of imposition or execution of sentence.
- 16-711. Restitution or reparation.
- 16-711.01. Restitution or reparation — Enforcement.
- 16-712. Community service.
- 16-713. Alien sentencing.

### § 16-701. Rules and regulations.

The Superior Court may make such rules and regulations for conducting business in the Criminal Division of the court, consistent with statutes applicable to such business and in the manner provided in section 11-946, as it may deem necessary and proper.

(Dec. 23, 1963, 77 Stat. 557, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(d)(1).)

**Prior Codifications.** — 1981 Ed., § 16-701. 1973 Ed., § 16-701.

#### CASE NOTES

##### ANALYSIS

Conflicts between rules and statutes.  
Construction and application.  
In general.  
Purpose.

##### Conflicts between rules and statutes.

Court rule, allowing 11 jurors where one is dismissed for good cause after empanelment, was invalid; rule conflicted with district statute guaranteeing 12 jurors. D.C. Code 1981, §§ 11-946, 16-701, 16-705(c); Criminal Rules 23, 23(b). *Flemming v. United States*, 546 A.2d 1001, 1988 D.C. App. LEXIS 147 (1988).

Assuming court has duty to reconcile alleged conflict between statute and court rule, reconciliation need not be attempted if doing so would deprive either of its essential meaning. D.C. Code § 16-701. *Flemming v. United States*, 546 A.2d 1001, 1988 D.C. App. LEXIS 147 (1988).

##### Construction and application.

Superior court rules are construed in light of corresponding federal rules when they are literally or substantially identical. D.C. Code SCR, Criminal Rule 17(c); D.C. Code § 16-701. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

Since it is provided by statute that business of Superior Court shall be conducted according to applicable federal rules unless modifications thereof are approved by the court, Rules of Superior Court must be construed in light of meaning of corresponding federal rule and, as with federal rules, Superior Court's rules, at least when they are substantially identical to federal rules, have force and effect of law. D.C. Code SCR, Criminal Rule 43; D.C. Code §§ 11-946, 16-701. *Campbell v. United States*, 295 A.2d 498, 1972 D.C. App. LEXIS 230 (1972).

##### In general.

Like federal rules, superior court rules, at least where substantially identical to federal rules, have force of law. D.C. Code SCR, Criminal Rule 17(c); D.C. Code § 16-701. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

##### Purpose.

Purpose of District of Columbia Court Reform and Criminal Procedure Act is to transfer to the superior court all those cases which, in other jurisdictions, would fall to the state courts. D.C. Code § 16-701 et seq. *Davis v. United States*, 397 A.2d 951, 1979 D.C. App. LEXIS 277 (1979).

**§ 16-702. Prosecution by indictment or information.**

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court.

(Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555, Pub. L. 91-358, title I, § 145(d)(2)(A).)

**Prior Codifications.** — 1981 Ed., § 16-702. 1973 Ed., § 16-702.

**§ 16-703. Process of Criminal Division; fees.**

(a) The Criminal Division of the Superior Court may issue process for the arrest of a person against whom an indictment is returned, an information is filed, or a complaint under oath is made.

(b) Process shall —

(1) be under the seal of the court;

(2) bear teste in the name of a judge of the court, and

(3) be signed by a clerk or employee of the court authorized to administer oaths.

(c) In cases arising out of violations of any of the ordinances of the District of Columbia, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases.

(d) In all other criminal cases, the process issued by the Superior Court may be directed to the United States marshal or to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15-709(b).

(Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(3); Mar. 24, 1998, D.C. Law 12-81, § 10(e), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-703.  
1973 Ed., § 16-703.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first

and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**CASE NOTES****In general.**

Allowing defendant to withdraw his guilty plea 14 years after proceeding on charge of attempted distribution of cocaine would be un-

fair and unjust, even though defendant claimed that his recollection was that he was not advised of potential consequences of plea, where there was no transcript or evidence to support



defendant's assertion and government would be severely prejudiced in its ability to prosecute

the case. *U.S. v. Peddie*, 135 WLR 1181 (Super. Ct. 2007).

## § 16-704. Bail; collateral security.

(a) A person charged with an offense triable in the criminal division of the Superior Court of the District of Columbia may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6).)

**Cross references.** — Pretrial detention and release, see § 23-1301 et seq.

Smoking violations, violator to post collateral in accordance with this section, see § 7-1706.

**Prior Codifications.** — 1981 Ed., § 16-704. 1973 Ed., § 16-704.

### CASE NOTES

#### ANALYSIS

In general.

Post and forfeiture procedure.

#### In general.

Although arrestees who are released on citation, bond or forfeitable collateral never need be presented before a magistrate, unless such alternatives are available promptly to those arrestees detained for processing, their detention would violate the Fourth Amendment. *U.S. Const. Amend. 4. Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

Class consisting of those citizens who were arrested as that term is used in Fourth Amendment and deprived of rights guaranteed under the Constitution because of failure to make prompt presentment to a magistrate regardless

of length of detention of arrest and regardless of whether individual's name was ever entered on arrest book was redefined as all those persons who were arrested and detained for over one-and-one-half hours before presentment, who were not released within a short time after arrest on bond, citation or collateral and who, therefore, were likely to have suffered unlawful and unconstitutional detention. *U.S. Const. Amend. 4. Lively v. Cullinane*, 451 F. Supp. 1000, 1978 U.S. Dist. LEXIS 17841 (1978).

#### Post and forfeiture procedure.

The "post and forfeiture" procedure in minor criminal or traffic offenses (1) is duly authorized by both statute and rule of court as an appropriate and legal method of terminating such cases, (2) is not an inchoate right, but a privilege recognized by law, court fiat, and longstanding practice, and (3) may be objected

to by the government when requested by a given defendant, or even revoked at a later date. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The theory behind the “post and forfeiture” process is that in cases of most petty offenses, the defendant is permitted to “post” a security upon release to ensure his return to court for a prospective trial, but then in lieu of appearing for trial, he may then “forfeit” the collateral as a kind of vicarious fine paid, without admitting or adjudicating any criminal or other liability. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The legislative branch has established the principle of “posting and forfeiting” collateral, but has left it to the judicial branch, which sets bonds as part of its intrinsic powers and duties, to promulgate a schedule of bond and collateral amounts for various petty offenses and infractions. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The “post and forfeiture” procedure is not a right, but a privilege extended as a matter of pragmatic resolution of the vast corpus of cases coming before the superior courts. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

## § 16-705. Jury trial; trial by court.

(a) In a criminal case tried in the Superior Court in which, according to the Constitution of the United States, the defendant is entitled to a jury trial, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial without a jury, the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

(b) In any case where the defendant is not under the Constitution of the United States entitled to a trial by jury, the trial shall be by a single judge without a jury, except that if —

(1)(A) The defendant is charged with an offense which is punishable by a fine or penalty of more than \$1,000 or by imprisonment for more than 180 days (or for more than six months in the case of the offense of contempt of court); or

(B) The defendant is charged with 2 or more offenses which are punishable by a cumulative fine or penalty of more than \$4,000 or a cumulative term of imprisonment of more than 2 years; and

(2) The defendant demands a trial by jury, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial by the court, the judge’s verdict shall have the same force and effect as that of a jury.

(b-1) If a defendant in a criminal case is charged with 2 or more offenses and the offenses include at least one jury demandable offense and one non-jury demandable offense, the trial for all offenses charged against that defendant shall be by jury unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial without a jury, the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

(c) The jury shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. Even absent such agreement, if, due to extraordinary circumstances, the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court, a valid verdict may be returned by the remaining eleven jurors.



(Dec. 23, 1963, 77 Stat. 558, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(4); May 15, 1993, D.C. Law 9-272, § 202, 40 DCR 796; Mar. 21, 1995, D.C. Law 10-232, § 2, 42 DCR 18; May 16, 1995, D.C. Law 10-255, § 14(a), 41 DCR 5193; May 21, 2002, D.C. Law 14-135, § 2, 49 DCR 3439.)

**Prior Codifications.** — 1981 Ed., § 16-705. 1973 Ed., § 16-705.

**Effect of amendments.** — D.C. Law 14-135, in subsec. (b)(1), designated subpar. (A) and in that subparagraph, substituted “The defendant is charged with an offense” for “the case involves an offense”, and substituted “court); or” for “court), and”, and added subpar. (B); rewrote subsec. (b)(2); and added subsec. (b-1). Prior to repeal, subsec. (b)(2) had read as follows: “(2) the defendant demands a trial by jury and does not subsequently waive a trial by jury in accordance with subsection (a), the trial shall be by jury.”

**Legislative history of Law 9-272.** — Law 9-272, the “Criminal and Juvenile Justice Reform Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

**Legislative history of Law 10-232.** — Law 10-232, the “Jury Trial Act of 1994,” was introduced in Council and assigned Bill No. 10-603,

which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-374 and transmitted to both Houses of Congress for its review. D.C. Law 10-232 became effective on March 21, 1995.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 14-135.** — Law 14-135, the “Misdemeanor Jury Trial Act of 2002”, was introduced in Council and assigned Bill No. 14-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 5, 2002, and March 5, 2002, respectively. Signed by the Mayor on March 25, 2002, it was assigned Act No. 14-311 and transmitted to both Houses of Congress for its review. D.C. Law 14-135 became effective on May 21, 2002.

## CASE NOTES

### ANALYSIS

Assault offenses.  
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—Authority of court, waiver of jury trial.  
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—Failure to demand, waiver of jury trial.  
—In general.  
—Inquiry by judge, waiver of jury trial.  
—Written waiver of jury trial.  
Witnesses.

### Assault offenses.

Defendant, who was convicted of assault with a dangerous weapon, has no constitutional right to a jury trial on the issue of restitution at the sentencing hearing. *United States v. Evans*, 112 WLR 1721 (Super. Ct. 1984).

### Attempts.

Defendant's statutory right to trial by jury was not violated by prosecutor's decision to prosecute for attempted threats, rather than



for threats, even though defendant would have enjoyed right to be tried by jury had he been prosecuted for threats; existence of right to jury trial depended on maximum punishment for offense that was charged, not on maximum punishment for offense that could have been charged but was not. *Evans v. United States*, 779 A.2d 891, 2001 D.C. App. LEXIS 169 (2001).

Right to a jury trial for an attempted offense is determined by the maximum imprisonment which could actually be imposed for the completed offense. *United States v. Evans*, 112 WLR 1721 (Super. Ct. 1984).

### **Conflicts between rules and statutes.**

Court rule, allowing 11 jurors where one is dismissed for good cause after empanelment, was invalid; rule conflicted with district statute guaranteeing 12 jurors. D.C. Code 1981, §§ 11-946, 16-701, 16-705(c); Criminal Rules 23, 23(b). *Flemming v. United States*, 546 A.2d 1001, 1988 D.C. App. LEXIS 147 (1988).

### **Construction and application.**

Under the statute providing that a valid verdict may be returned by the remaining eleven jurors if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, two distinct issues are presented for the trial judge to decide: whether to excuse a juror, and if so, whether to require the remaining jurors to continue deliberating or, alternatively, to declare a mistrial. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Statutory provision affording right to jury trial on misdemeanor charges tried together with two or more offenses including at least one jury demandable offense did not apply in prosecution in which trial had commenced prior to statute's effective date; statutory right applied in cases in which entire trial process, beginning with voir dire, continuing through presentation of evidence, and concluding with submission of case to jury, commenced after statute's effective date, and did not attach after voir dire, jury swearing, opening statements, and direct and cross-examination of witnesses, all occurring with understanding that particular charge would not be submitted to jury. *Smith v. United States*, 847 A.2d 1159, 2004 D.C. App. LEXIS 195 (2004).

Statute need not expressly eliminate common law right to jury trial, but may do so merely by imposing maximum penalty of no more than six months or 180 days. *Day v. United States*, 682 A.2d 1125, 1996 D.C. App. LEXIS 184 (1996), writ of certiorari denied by 520 U.S. 1170, 117 S. Ct. 1435, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2284, 65 U.S.L.W. 3692 (1997).

Statute authorizing 11-juror verdicts, when juror has been excused during deliberations due to extraordinary circumstances, was change in procedural law that did not violate any substantial right of defendant, and thus statute applied to case that began after statute's effective date, although conduct for which defendant was being tried occurred before effective date of statute. D.C. Code 1981, § 16-705(c). *Duvall v. United States*, 676 A.2d 448, 1996 D.C. App. LEXIS 84 (1996).

Fact that rule authorizing jury of fewer than 12 members had not yet been amended to conform to statute authorizing 11-juror verdicts under certain extraordinary circumstances did not make statute inapplicable, as unambiguous statutory language provided for application without amending rule and legislative history also indicated that amending rule was unnecessary to effectuate statute. D.C. Code 1981, § 16-705(c); Criminal Rule 23(b). *Duvall v. United States*, 676 A.2d 448, 1996 D.C. App. LEXIS 84 (1996).

Statute authorizing 11-juror verdicts under certain extraordinary circumstances did not criminalize conduct which was lawful prior to its enactment, or otherwise defeat any legitimate expectation which defendant might have had, such that its application to defendant being prosecuted for conduct that preceded statute's effective date would be ex post facto violation; statute affected only procedures under which defendant would be tried and its consequences were comparatively minor and were not likely to bring any serious disadvantage to defendant. U.S. Const. Art. 1, § 9, cl. 3; D.C. Code 1981, § 16-705(c). *Duvall v. United States*, 676 A.2d 448, 1996 D.C. App. LEXIS 84 (1996).

Court of Appeals should interpret any ambiguity in statute which confers right to jury trial for offenses carrying maximum prison terms of "more than 180 days" in favor of extending fundamental right to jury trial. U.S.C. Const. Amend. 6; D.C. Code 1981, § 16-705(b). *Turner v. Bayly*, 673 A.2d 596, 1996 D.C. App. LEXIS 39 (1996).

"Six months" and "180 days" are not equivalent for purposes of statute which confers right to jury trial for offenses carrying maximum prison terms of "more than 180 days." U.S.C. Const. Amend. 6; D.C. Code 1981, § 16-705(b). *Turner v. Bayly*, 673 A.2d 596, 1996 D.C. App. LEXIS 39 (1996).

Proper application of D.C. Code 1981, § 16-705, which provides entitlement to trial by jury and right to waive trial by jury, and Criminal Rule 23(a), which provides requirements for waiver of right to trial by jury, requires determination of whether criminal charge is such as to entitle defendant to jury trial and where defendant is so entitled, second question is whether defendant entered valid waiver of such

right. *Jackson v. United States*, 498 A.2d 185, 1985 D.C. App. LEXIS 480 (1985).

Rule and statute providing that a jury shall consist of 12 persons unless parties with approval of court and by stipulating in writing agree to a number less than 12 were inapplicable to situation where juror was stricken during trial on defendant's motion. D.C. Code § 16-705(c); D.C. Code General Sessions Court Rules, Criminal Division rule 23(b). *Graham v. United States*, 267 A.2d 358, 1970 D.C. App. LEXIS 305 (App. 1970).

### Construction with federal law.

The Council is the authoritative legislative voice for the District of Columbia for the purposes of representing its citizens' opinions on the "seriousness" of charged offenses for the purposes of determining the right to a jury trial. Accordingly, the additional statutory penalties to which the D.C. Superior Court must look in such an inquiry are only those enacted into law by the Council; federal statutes cannot be utilized as a measurement of the Council's legislative will in determining a defendant's right to a jury trial. *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995).

### Contempt proceedings.

Neither federal Constitution nor any statute, entitled nonlawyer who alleged violated injunction against unauthorized practice of law to a jury trial in a civil contempt proceeding. In re *Banks*, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Nonlawyer was not entitled to a jury trial of the criminal contempt; judge imposed concurrent sentences of 178 days for each of five contempts, thus leaving sentence below the jury-trial threshold. In re *Banks*, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Criminal contempt proceeding is not a criminal prosecution, and consequently not all procedures required in a criminal trial are necessary in a hearing on a charge of contempt. In re *Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Sentences for criminal contempt of up to six months may constitutionally be imposed without a jury trial. In re *Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

For purposes of right to jury trial, contempt is a petty offense unless the penalty includes a fine in excess of \$1000 or imprisonment exceeding six months. In re *Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Additional imposition of three years probation does not convert a petty offense into one

requiring a jury trial. In re *Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Statutory right to jury trial in contempt proceedings is limited to proceedings resulting in imprisonment for more than six months. U.S. Const. Amend. 6; D.C. Code 1981, § 16-705. *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1988 D.C. App. LEXIS 48 (1988).

Attorney did not have statutory or constitutional right to jury trial in contempt proceeding based on attorney's alleged unauthorized practice of law; actual penalty imposed was fine that did not exceed \$300. D.C. Code 1981, § 16-705(b); U.S.C. Const. Amend. 6. *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1988 D.C. App. LEXIS 48 (1988).

Criminal contempt defendants are entitled to procedures inherent in fundamental due process, including right to trial by jury under certain circumstances. U.S. Const. Amend. 6; D.C. Code 1981, § 16-705. *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1988 D.C. App. LEXIS 48 (1988).

A guarantee to trial by jury applies to a contempt case in which the sentence may exceed six months. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S.C. Const. Amend. 6. In re *Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

In amending applicable statute, Congress intended to afford jury trial in contempt cases only when penalty imposed exceeded six months' imprisonment, and thus criminal contemnors had no right to jury trial under such statute when only penalty imposed was a fine. D.C. Code § 16-705(b). In re *Evans*, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

Appropriate standard for determining seriousness of contempts committed in District of Columbia local courts was to be found in certain statute concerning trial by jury, and thus fact that attorney, who was fined \$500 in first proceeding for criminal contempt arising from failure to appear in three court-appointed cases, and who was fined \$400 in second proceeding for failure to pay \$500 fine, was fined in both convictions in excess of \$300, the standard contained in certain statute, meant that he was convicted of serious offenses and entitled to jury trial in both instances, as guaranteed by Sixth Amendment and by another statute. D.C. Code § 16-705(a, b); U.S. Const. Amend. 6. In re *Evans*, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

In proceeding in which attorney was fined \$500 for criminal contempt arising from failure to appear in three court-appointed cases, appropriate remedy for violation of attorney's Sixth Amendment right to jury trial was not to reverse his conviction and remand for jury trial, as attorney urged, but, rather, was to order that attorney's fine be reduced to \$300, the standard



contained in applicable statute concerning applicability of trial by jury right. D.C. Code § 16-705(b); U.S. Const. Amend. 6. In re Evans, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

#### **Excuse or removal of jurors.**

Assessment of juror bias arising from improper contact with juror may require consideration of a number of factors, including the nature of the communication, the length of the contact, the possibility of removing juror taint by a limiting instruction, and the impact of the communication on both the juror involved and the rest of the jury. *Richardson v. United States*, 893 A.2d 590, 2006 D.C. App. LEXIS 91 (2006), writ of certiorari denied by 548 U.S. 917, 126 S. Ct. 2961, 165 L. Ed. 2d 974, 2006 U.S. LEXIS 5105, 74 U.S.L.W. 3721 (2006).

Dismissal of "holdout" juror during deliberations was supported by record, in prosecution for weapons offenses; first note received from another juror indicating that "holdout" juror had not been forthright during voir dire regarding weight to be accorded to testimony of police officer was sufficient to warrant inquiry, and thus judge acted within her discretion in her initial response, which was forceful reinstruction of jury, and information subsequently provided orally by foreperson was consistent with substance of information provided in four notes written by other jurors, three of which were written after reinstruction, which suggested that, even after reinstruction, "holdout" juror was not carrying out her responsibilities appropriately. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

The authority conferred on the court to excuse a juror for just cause after the jury has retired to consider its verdict is to be exercised with caution, and only when "extraordinary circumstances" and "just cause" are present. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Whether to excuse a juror after the jury has retired to consider its verdict, and if so, whether to require the remaining jurors to continue deliberating or, alternatively, to declare a mistrial, are discretionary decisions, subject to review for abuse. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Where the question of managing a deadlocked jury arises in conjunction with the question of excusing a juror for cause, the trial court must exercise its discretion with especial care. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

To remove a juror because he is unpersuaded by the government's case is to deny defendant his right to a unanimous verdict. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Court of Appeals would not find error in trial court's refusal to grant defense counsel's motion for mistrial, after trial court dismissed juror during deliberations after concluding that juror was not following court's instructions, in prosecution for weapons offenses, especially when no claim of error with respect to trial court's failure to declare mistrial had been asserted on behalf of defendant. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

A harmless error inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error, rather it is whether the error itself had substantial influence, and if so, or one is left in grave doubt, the conviction cannot stand. *Barron v. United States*, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Trial judge did not abuse her discretion by dismissing juror during deliberations based on juror's refusal to take part in deliberations; trial judge gave instructions to jury regarding the proper grounds they were to use in reaching a decision, when issue of misconduct failed to be resolved trial judge conducted a voir dire of remaining jurors, and during voir dire of jurors trial judge took pains to insure that she learned nothing about any juror's views of the evidence, but only whether or not anyone had observed that juror refuse to follow the instructions or deliberate. *Barron v. United States*, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Under the statute providing that a valid verdict may be returned by the remaining eleven jurors if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, two distinct issues are presented for the trial judge to decide: whether to excuse a juror, and if so, whether to require the remaining jurors to continue deliberating or, alternatively, to declare a mistrial. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Where the question of managing a deadlocked jury arises in conjunction with the question of excusing a juror for cause, the trial judge must exercise his or her discretion with especial care. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Record did not support defendant's claim that juror was improperly dismissed during deliberations because of her views or to break deadlock; record showed that juror was removed for reason that trial court gave, i.e., that juror had threatened to harm another juror, and was paralyzing deliberations by intimidating jurors who were afraid of her. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

A juror may not be excused for the purpose of breaking a deadlock or because of her views on



the merits. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

When a request for dismissal of a juror during deliberations stems from the juror's view of the sufficiency of the evidence that the government offered at trial, a judge may not discharge the juror: the judge must either declare a mistrial or send the juror back to deliberations with instructions that the jury continue to attempt to reach agreement. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

If the record evidence discloses any reasonable possibility that the impetus for a juror's dismissal stems from the juror's views on the merits of the case, the court must not dismiss the juror; in such a case, the judge must either declare a mistrial or send the juror back to deliberations with instructions that the jury continue to attempt to reach agreement. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

A juror's assurance that he or she can render a fair and impartial verdict despite the presence of another juror who has committed misconduct is not dispositive of whether the latter should be removed. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

#### **Extraordinary circumstances.**

The authority conferred on the court to excuse a juror for just cause after the jury has retired to consider its verdict is to be exercised with caution, and only when "extraordinary circumstances" and "just cause" are present. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Deliberating juror's threat of physical violence and intimidation of her fellow jurors constituted "extraordinary circumstances" and "just cause" to excuse her. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

When a juror's unprovoked misconduct upsets deliberations and prevents the jury from functioning as a jury must function, there exist "extraordinary circumstances" and "just cause" to excuse the disruptive juror. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Trial judge did not abuse her discretion by determining that "extraordinary circumstances" of death of juror's de facto parent warranted exercise of statutory authority to permanently excuse juror after deliberations began in order to allow him to attend funeral across country, and continuation of trial with remaining 11 jurors, rather than adjournment until juror returned from funeral, in light of circumstances that trial defense counsel never suggested adjournment, that unexpected delays could have arisen involving funeral, and

that approaching holiday weekend could have resulted in suspension of deliberations for nearly a week. D.C. Code 1981, § 16-705(c). *Salmon v. United States*, 719 A.2d 949, 1997 D.C. App. LEXIS 262 (1997).

Death of de facto parent who had raised juror constituted "extraordinary circumstances" within meaning of provision of Jury Trial Amendment Act (JTAA) allowing trial court to excuse juror after jury began deliberations on basis of such circumstances and to proceed with remaining 11 jurors. D.C. Code 1981, § 16-705(c). *Salmon v. United States*, 719 A.2d 949, 1997 D.C. App. LEXIS 262 (1997).

#### **Firearm offenses.**

Defendant was entitled to jury trial in trial for offense of carrying a pistol without a license, possession of unregistered firearm and possession of ammunition without valid registration, where maximum potential sentence of imprisonment for each offense was one year. D.C. Code 1981, §§ 6-2376, 16-705(a), 22-3204, 22-3215; Criminal Rule 23(a). *Jackson v. United States*, 498 A.2d 185, 1985 D.C. App. LEXIS 480 (1985).

Since, on charge of carrying a pistol without a license, the potential maximum imprisonment exceeded 90 days, defendant was entitled to a trial by jury. D.C. Code §§ 16-705(b)(1), 22-3204, 22-3215. *Copening v. United States*, 353 A.2d 305, 1976 D.C. App. LEXIS 491 (1976).

#### **In general.**

Commercial landlord and tenant were sophisticated commercial entities, and thus, there was no inequality of bargaining power between the parties so as to render jury waiver clause unenforceable for purposes of landlord's action against tenant for possession of the leased premises; tenant was free either to negotiate over the inclusion of a jury waiver provision or to find alternative office space. *Pers Travel, Inc. v. Canal Square Assocs.*, 804 A.2d 1108, 2002 D.C. App. LEXIS 486 (2002).

Failure of tenant's representative to read the commercial lease closely did not nullify the jury waiver clause in lease for purposes of landlord's action against tenant for possession of the leased premises. *Pers Travel, Inc. v. Canal Square Assocs.*, 804 A.2d 1108, 2002 D.C. App. LEXIS 486 (2002).

The existence of a right to a jury trial depends on the maximum punishment for the offense that is charged, not on the maximum punishment for an offense that could be charged but is not. *Evans v. United States*, 779 A.2d 891, 2001 D.C. App. LEXIS 169 (2001).

Prosecutions under threats and unlawful entry statutes, with their maximum penalties of six months in prison, entitled defendants to trials by jury. U.S. Const. Amend. 6; D.C. Code 1981, §§ 16-705(b), 22-507, 22-3102. *Turner v.*

Bayly, 673 A.2d 596, 1996 D.C. App. LEXIS 39 (1996).

If offense is of nature indictable at common law and thus tried by jury that offense is triable by jury under the Constitution. D.C. Code § 16-705. Gaithor v. United States, 251 A.2d 644, 1969 D.C. App. LEXIS 223 (App. 1969).

Right to trial by jury must be afforded as to criminal offenses providing penalty so severe that it gives such offenses character of a common-law crime or of a major offense. D.C. Code § 16-705. Gaithor v. United States, 251 A.2d 644, 1969 D.C. App. LEXIS 223 (App. 1969).

#### **Judicial inquiry into irregularity.**

Defendant was not deprived of right to conduct inquiry into question of jury bias and prejudice based on juror's discovery at beginning of deliberations of piece of paper in jury room that had sunset time for particular date, in trial for distribution of heroin within 1,000 feet of school; trial court conducted hearing immediately upon being notified of paper, defendant had opportunity to question two jurors with information concerning paper, trial court gave defendant opportunity to comment and to suggest questions for other jurors, and defendant was not entitled to present questions that called for jurors to speculate. Ransom v. United States, 932 A.2d 510, 2007 D.C. App. LEXIS 573 (2007).

Where the impartiality of a juror has been plausibly called into question, it is the responsibility of the trial judge to hold a hearing to determine whether the allegation of bias has merit, and judge must conduct a thorough inquiry into whether the defendant suffered actual prejudice. Richardson v. United States, 893 A.2d 590, 2006 D.C. App. LEXIS 91 (2006), writ of certiorari denied by 548 U.S. 917, 126 S. Ct. 2961, 165 L. Ed. 2d 974, 2006 U.S. LEXIS 5105, 74 U.S.L.W. 3721 (2006).

Trial judge's investigation of juror bias after one juror reported uncomfortable eye contact with relative of the defendant who was a defense witness and after another juror asserted that defense witness "deliberately made eye contact" with him properly was limited to the two jurors who were involved in the eye contact and foreperson of jury, and defendant was not entitled to question defense witness who allegedly made eye contact with juror; judge allowed both defense and government counsel to question jurors, and whether it was defense witness or someone else with whom juror had the momentary eye contact was irrelevant, and juror's being mistaken was not the equivalent of being a liar. Richardson v. United States, 893 A.2d 590, 2006 D.C. App. LEXIS 91 (2006), writ of certiorari denied by 548 U.S. 917, 126 S. Ct. 2961, 165 L. Ed. 2d 974, 2006 U.S. LEXIS 5105, 74 U.S.L.W. 3721 (2006).

#### **Juror misconduct.**

Anti-deadlock instruction did not improperly

coerce a guilty verdict, in trial of defendant for murder, though clerk's separate conversations with two jurors during deliberations indicated that one juror was holding out for an acquittal and in assessing the risk of coercion it had to be assumed that the hold-out was informed of his fellow jurors' conversations, where the trial judge during the instruction told the jury that he did not know how it was divided, judge did not express concerns about any juror's conduct in deliberations, judge told the jury that it should take care not to disclose its split in any future notes to the court, judge provided the Gallagher instruction, and the overall tenor of the Gallagher instruction made it clear that a verdict was not being demanded. Hankins v. United States, 3 A.3d 356, 2010 D.C. App. LEXIS 504 (2010).

Mistrial was not warranted from jury's discovery, at beginning of deliberations, of piece of paper in jury room that listed sunset time for particular day, in prosecution for distribution of heroin within 1,000 feet of school; chart of sunset time was not crucial to primary factual issue as to whether he was person who sold heroin to undercover investigator, defendant was arrested shortly after controlled buy with marked bills used by investigator to purchase heroin, none of juror's except one who found paper, had seen contents and had no direct knowledge of contents, and each juror stated unequivocally that they could decide case based on evidence presented at trial alone. Ransom v. United States, 932 A.2d 510, 2007 D.C. App. LEXIS 573 (2007).

Defendant was not entitled to either mistrial or new trial on ground that one of the jurors reported "very uncomfortable eye contact" with a relative of the defendant who was a defense witness and that another juror asserted that a defense witness "deliberately made eye contact" with him; no words were spoken and only momentary eye contact occurred, there was no hint of fear on the part of any juror, and both jurors who had the eye contact stated more than once that they did not feel threatened. Richardson v. United States, 893 A.2d 590, 2006 D.C. App. LEXIS 91 (2006), writ of certiorari denied by 548 U.S. 917, 126 S. Ct. 2961, 165 L. Ed. 2d 974, 2006 U.S. LEXIS 5105, 74 U.S.L.W. 3721 (2006).

Trial judge has considerable discretion in conducting an investigation into alleged juror misconduct. Bates v. United States, 834 A.2d 85, 2003 D.C. App. LEXIS 624 (2003).

Trial court's action of allowing jury to view defendant's car during deliberations of assault prosecution constituted error; act of not allowing parties to dispute the significance of car as evidence was an unfair infringement on right of parties to present arguments regarding all evidence in case. Barron v. United States, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).



Without an inquiry into a claim of juror misconduct during deliberations, the court will have little evidence with which to make the often difficult distinction between a juror purposefully disregarding the court's instructions on the law and a juror who is simply unpersuaded by the Government's evidence. *Barron v. United States*, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Court of Appeals would only review defendant's claim that trial court mishandled juror, who slept through portions of trial, for plain error, where defendant acquiesced to judge's handling of matter. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Brief lapses in jurors' attention that are not prejudicial may be excused; prolonged juror inattentiveness in a criminal trial is another matter, however, and jeopardizes the defendant's Fifth and Sixth Amendment rights to a fair trial before a tribunal both impartial and mentally competent to afford a hearing. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

If sleep by a juror makes it impossible for that juror to perform his or her duties or would otherwise deny the defendant a fair trial, the sleeping juror should be removed from the jury. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

When a trial court receives a report of a sleeping juror, it has considerable discretion in deciding how to respond. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Unsubstantiated or unreliable allegations of juror misconduct, such as sleeping during trial, need not trigger an evidentiary hearing immediately; however, if the court notices, or is reliably informed, that a juror is asleep during trial, the court has a responsibility to inquire and to take further action if necessary to rectify the situation. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

In conducting hearing regarding sleeping juror, trial court should begin with a hearing to determine whether the juror had been asleep

and, if so, whether the juror had missed essential portions of the trial; on the basis of its findings the court should then determine whether the juror's conduct had resulted in substantial prejudice to the accused, meaning deprivation of the continued, objective, and disinterested judgment of the juror, thereby foreclosing the accused's right to a fair trial. *Mateen Abdus Samad v. United States*, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

The trial judge and counsel must respect the presumptive secrecy of jury deliberations when it becomes necessary to inquire into a report of juror misconduct during deliberations; the judge must take care, moreover, that any inquiry does not itself "foment discord among jurors" or subtly influence the work of the jury. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Trial judge did not coerce verdict by allowing remaining eleven jurors to continue deliberating after removing one juror for misconduct; although jury had sent two notes reporting itself at loggerheads, judge did not give anti-deadlock instruction, but instead deferred to jury's decision not to seek further guidance from court after juror's removal, trial judge took pains to instruct jury that juror's removal had nothing to do with her views on merits, which were not even known, and fact that jury deliberated only short while longer did not mean that any juror felt undue pressure to reach verdict. *Shotikare v. United States*, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

#### **Loan sharking.**

Defendants, charged with loan sharking, which subjected them to maximum penalty of \$200 and 30 days imprisonment, did not have right to a jury trial; loan sharking was malum prohibitum. D.C. Code 1981, §§ 16-705(b), 26-701; U.S.C. Const. Art. 3, § 2, cl. 3; Amend. 6. *Browner v. District of Columbia*, 549 A.2d 1107, 1988 D.C. App. LEXIS 202 (1988).

#### **Motor vehicle violations.**

Unless there are special circumstances present, there is no right to a trial by jury for the charge of driving under the influence because the maximum penalties prescribed are a fine of no more than \$300 and imprisonment of no more than 90 days. The opprobrium with which the charge is viewed, the stigma attached, and the consequences of conviction do not constitute special circumstances. *District of Columbia v. Shanahan*, 113 WLR 105 (Super. Ct. 1985).

#### **Multiple offenses.**

Defendant who was charged with both assault and jury-demandable offense of possession of a prohibited weapon (PPW) was, absent



waiver, entitled to jury trial on both counts; statute governing right to jury trial in prosecutions for both non-jury and jury-demandable offenses was unambiguous in this respect, and government did not suggest that defendant waived her right to a trial by jury. *Davis v. United States*, 984 A.2d 1255, 2009 D.C. App. LEXIS 639 (2009).

When an act violates more than one criminal statute, government may prosecute under either so long as it does not discriminate against any class of defendants. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

When an act violates two criminal statutes, the courts are obliged to permit enforcement of both statutes in the absence of an express statement of congressional intent. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Defendant cannot simply aggregate maximum penalties of various offenses with which he is charged and then claim right to jury trial if cumulative penalties would so entitle him. *Olevsky v. District of Columbia*, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

The Superior Court would not aggregate the penalties for multiple misdemeanor offenses charged in order to reach the threshold penalty required for a jury trial. *United States v. Joseph*, 122 WLR 2337 (Super. Ct. 1994).

### **Petty offenses.**

In order to be entitled to a jury trial for a "petty" offense, a defendant must show that any additional penalties, i.e., penalties other than incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a serious one. *Thomas v. United States*, 942 A.2d 1180, 2008 D.C. App. LEXIS 87 (2008).

An offense is considered "petty," for purposes of constitutional right to jury trial, if it is punishable by a sentence of no more than 180 days of incarceration. *Thomas v. United States*, 942 A.2d 1180, 2008 D.C. App. LEXIS 87 (2008).

### **Presumptions and burden of proof.**

Defendant can overcome presumption that crime is petty, such that defendant is not afforded right of jury trial, in cases with maximum sentence of six months or less only by demonstrating that he is subject to additional statutory penalties. U.S. Const. Art. 3, § 2, cl. 3; Amend. 6. *Day v. United States*, 682 A.2d 1125, 1996 D.C. App. LEXIS 184 (1996), writ of certiorari denied by 520 U.S. 1170, 117 S. Ct. 1435, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2284, 65 U.S.L.W. 3692 (1997).

### **Refusal to accept jury of eleven.**

Government's refusal to accept jury of 11 jurors after excusing of juror whose father died did not violate defendant's due process rights,

in light of statute allowing fewer than 12 jurors only by agreement of parties, even if government's refusal was based on desire to permanently exclude additional juror inclined to acquit whose conduct and capacity had been challenged in jury foreman's notes to judge. D.C. Code 1981, § 16-705(c); U.S.C. Const. Amends. 5, 14. *Johnson v. United States*, 619 A.2d 1183, 1993 D.C. App. LEXIS 24 (1993).

### **Review.**

Trial court's decision to proceed to bench trial without any jury trial waiver from defendant as to charges of simple assault and possession of a prohibited weapon (PPW), the latter being a jury-demandable offense, was not plain error; upon post-judgment motion by defendant, PPW conviction was vacated on account of defendant's failure to waive jury trial, and remand for new trial to the bench would have been pointless. *Davis v. United States*, 984 A.2d 1255, 2009 D.C. App. LEXIS 639 (2009).

Defendant's failure to object to trial court's decision to proceed to bench trial without any jury trial waiver from defendant as to charges of simple assault and possession of a prohibited weapon (PPW) rendered the error subject to plain error review on appeal. *Davis v. United States*, 984 A.2d 1255, 2009 D.C. App. LEXIS 639 (2009).

Upon a prima facie showing of juror bias or partiality, it is the government's burden to demonstrate that the juror's contact with extraneous information or with a trial witness was harmless or non-prejudicial, and the extent and type of the trial court's investigation into the improper contact are confided to the court's discretion and reviewable only for abuse. *Richardson v. United States*, 893 A.2d 590, 2006 D.C. App. LEXIS 91 (2006), writ of certiorari denied by 548 U.S. 917, 126 S. Ct. 2961, 165 L. Ed. 2d 974, 2006 U.S. LEXIS 5105, 74 U.S.L.W. 3721 (2006).

Court of Appeals would not find error in trial court's refusal to grant defense counsel's motion for mistrial, after trial court dismissed juror during deliberations after concluding that juror was not following court's instructions, in prosecution for weapons offenses, especially when no claim of error with respect to trial court's failure to declare mistrial had been asserted on behalf of defendant. *Braxton v. United States*, 852 A.2d 941, 2004 D.C. App. LEXIS 335 (2004).

Trial court's failure sua sponte to submit misdemeanor marijuana charge to jury, in reliance upon statute affording right to jury trial on certain misdemeanor charges, was not plain error, where statute became effective on day before felony charges against defendant were submitted to the jury and trial had proceeded to that point under assumption of all parties that misdemeanor charge was being tried to court.

Smith v. United States, 847 A.2d 1159, 2004 D.C. App. LEXIS 195 (2004).

Defendant's failure to preserve by timely objection trial court's failure to instruct jury on charge of misdemeanor unlawful possession of marijuana was not excused by prosecutor's misstatement in pretrial conference of effective date of statute providing right to jury trial on certain misdemeanor charges, where defendant could not reasonably have relied on prosecutor's misrepresentation in failing to ascertain statute's effective date and bring it to court's attention. Smith v. United States, 847 A.2d 1159, 2004 D.C. App. LEXIS 195 (2004).

Defense counsel's pretrial request for jury trial on misdemeanor charge of unlawful possession of marijuana was insufficient to preserve for appellate review defendant's contention that he was entitled to jury trial on such charge, where at time of counsel's request statute providing for jury trial on misdemeanor charges in cases such as defendant's was not yet effective and counsel did not renew request after statute's effective date. Smith v. United States, 847 A.2d 1159, 2004 D.C. App. LEXIS 195 (2004).

There was no error in holding jury trial on charges of obstruction of justice by attempting to intimidate a juror; defendants demanded a jury trial, and steps were taken to assure that jurors would not be affected by the nature of the case. Smith v. United States, 837 A.2d 87, 2003 D.C. App. LEXIS 701 (2003), writ of certiorari denied by 541 U.S. 1081, 124 S. Ct. 2435, 158 L. Ed. 2d 996, 2004 U.S. LEXIS 3976, 72 U.S.L.W. 3733 (2004).

For purposes of harmless error analysis, in order to determine whether the error had substantial influence, an appellate court must also consider the jury's actions during deliberations. Barron v. United States, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Trial judge, after properly dismissing a juror during deliberations, did not abuse her discretion by allowing remaining jurors to deliberate to a verdict, even though defendant claimed such action was an attempt to coerce a verdict; fact that jury acquitted defendant of one charged count strongly suggested that no atmosphere of coercion affected its continued deliberations. Barron v. United States, 818 A.2d 987, 2003 D.C. App. LEXIS 141 (2003).

Whether to excuse a juror after the jury has retired to consider its verdict, and if so, whether to require the remaining jurors to continue deliberating or, alternatively, to declare a mistrial, are discretionary decisions, subject to review for abuse. Shotikare v. United States, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

When reviewing the denial of a defendant's motion for mistrial, the court looks to several factors, including the gravity of the misconduct,

the relative strength of the government's case, the centrality of the issue affected, and any mitigating actions taken by the court, all the while giving due deference to the decision of the trial judge, who had the advantage of being present not only when the alleged misconduct occurred, but throughout the trial. Shotikare v. United States, 779 A.2d 335, 2001 D.C. App. LEXIS 181 (2001).

Trial judge's rulings which excused juror after deliberations began and which allowed trial to continue with 11 jurors would be reviewed for abuse of discretion. D.C. Code 1981, § 16-705(c). Salmon v. United States, 719 A.2d 949, 1997 D.C. App. LEXIS 262 (1997).

Trial judge did not abuse her discretion in denying defendant's motion for mistrial and allowing trial to proceed to verdict with 11 jurors as authorized under Jury Trial Amendment Act (JTAA) after one juror had been excused to allow him to attend funeral, even though trial had been short, and even though trial judge did not explicitly balance relative social costs of continuing trial versus mistrial. D.C. Code 1981, § 16-705(c). Salmon v. United States, 719 A.2d 949, 1997 D.C. App. LEXIS 262 (1997).

Trial court's insufficient inquiry before determining that defendant, a native of Honduras who did not speak English, waived right to jury trial did not require reversal of conviction, but, rather, remand was appropriate remedy to determine whether defendant's waiver of her right to jury trial was in fact an understanding and intentional waiver. D.C. Code 1981, § 16-705(a); Criminal Rule 23(a). Lopez v. United States, 615 A.2d 1140, 1992 D.C. App. LEXIS 278 (1992).

Court of Appeals would not consider the Government's contention, raised for the first time on appeal, that defendant failed at arraignment to effectively waive his right to a jury trial. D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rule 23(a). Sparks v. United States, 358 A.2d 307, 1976 D.C. App. LEXIS 275 (1976).

The trial court, after defendant at his arraignment on assault charge had waived his right to a jury trial with the consent of both the Government and the court, abused its discretion in allowing the Government to withdraw its consent to a nonjury trial, where the justification proffered by the Government for its later request for a jury trial was, in effect, simply because it had changed its mind, and where, in view of the chronology of the particular case, reliance on the bureaucratic nature of the Government was misplaced and clearly insufficient to allow withdrawal of the Government's prior consent. D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rule 23(a). Sparks v. United States, 358 A.2d 307, 1976 D.C. App. LEXIS 275 (1976).



Where government conceded that defendant demanded trial by jury and record of what occurred in open court was silent as to any waiver, case would be remanded for hearing to determine whether defendant knowingly and voluntarily waived his right to jury trial and requested trial by the court. D.C. Code § 16-705(a). *Towler v. United States*, 271 A.2d 553, 1970 D.C. App. LEXIS 363 (App. 1970).

In prosecution, without jury, for carrying a pistol without a license and for possessing a sawed-off shotgun, where record of what occurred in open court was silent as to any waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". D.C. Code §§ 16-705(a), 22-3204, 22-3214(a). *Jackson v. United States*, 262 A.2d 106, 1970 D.C. App. LEXIS 216 (App. 1970).

### Serious crimes.

Fact that defendant convicted of misdemeanor child abuse was required to register pursuant to the Sex Offenders Registration Act (SORA) did not convert such petty offense into a "serious" crime for which defendant was entitled to jury trial; SORA was a remedial regulatory enactment, not a penal law, that was adopted to protect the public, especially minors, from the threat of recidivism posed by sex offenders who have been released into the community. *Thomas v. United States*, 942 A.2d 1180, 2008 D.C. App. LEXIS 87 (2008).

Defendant, who had been charged with misdemeanor sexual abuse and possession of marijuana, was not entitled to jury trial under Sixth Amendment on basis that, if convicted, he would be required to register as a sex offender, thus raising his offenses from "petty" to "serious," such as would implicate his right to jury trial; "misdemeanor offense committed against an adult" did not require registration unless such registration was part of plea agreement, victim was 42 years old, and no plea agreement was involved in defendant's case. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Administrative deportation proceedings do not raise an otherwise petty offense to the level requiring a jury trial under Sixth Amendment. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

There is a presumption that crimes punishable by incarceration of six months or less are not deemed serious, and thus do not implicate federal constitutional right to a jury trial; this presumption can be rebutted only by a showing that additional statutory penalties elevate the crime from petty to serious. *Olafisoye v. United*

*States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

For purposes of federal constitutional right to a jury trial, the factor that distinguishes a serious offense, for which a jury trial would be warranted, from a petty offense, for which a jury trial would not be warranted, is the maximum authorized period of incarceration. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Defendant, who had been charged with misdemeanor sexual abuse and possession of marijuana, was not entitled to jury trial under Sixth Amendment on basis that, if convicted, he would face deportation, thus raising his offenses from "petty" to "serious," such as would implicate his right to jury trial; defendant, who was an alien, could be deported after being convicted of crime of domestic violence, but defendant's crime did not constitute "crime of domestic violence" such as would make defendant deportable, given that defendant and victim had had no intimate relationship. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Sixth Amendment right to jury trial arises with "serious" or non-petty offenses. In *re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

For purposes of right to jury trial, most relevant indication of the seriousness of an offense is the severity of the penalty authorized for its commission. In *re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Where no maximum penalty is authorized for an offense, the actual sentence imposed provides the best gauge to the seriousness of the offense, for purpose of right to jury trial. In *re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Simple assault is not serious crime, such that defendant would have right to jury trial, on basis that assault was jury triable at common law; relevant statute supersedes common law. U.S. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1981, §§ 22-504, 49-301. *Day v. United States*, 682 A.2d 1125, 1996 D.C. App. LEXIS 184 (1996), writ of certiorari denied by 520 U.S. 1170, 117 S. Ct. 1435, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2284, 65 U.S.L.W. 3692 (1997).

To distinguish "serious" from "petty" offenses, for purposes of determining whether a defendant is entitled to a jury trial under the Sixth Amendment, court looks to objective standards such as may be observed in laws and practices of community taken as a gauge of its social and ethical judgments. U.S.C. Const. Amend. 6. *Burgess v. United States*, 681 A.2d 1090, 1996 D.C. App. LEXIS 307 (1996).

Neither assault nor destruction of property were "serious crimes" which entitled defendant to a jury trial under Sixth Amendment, where District of Columbia legislature had reduced



the crimes to petty offenses. D.C. Code 1981, §§ 22-403, 22-504(a). *Burgess v. United States*, 681 A.2d 1090, 1996 D.C. App. LEXIS 307 (1996).

Defendant had no right to a jury trial on charge of driving under the influence of alcohol where the statutory penalty did not include a prison term of at least six months, and any additional statutory penalties were not so severe that it was clear that the legislature had determined that the offense is "serious." D.C. Code 1981, §§ 16-705, 40-716(b)(1); U.S. Const. Amend. 6. *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

### Streamlined offenses.

Misdemeanor Streamlining Act, which mandates nonjury trial unless Constitution guarantees right to trial by jury or maximum penalty for offense exceeds 180 days' incarceration or \$1,000 fine, and which reduces maximum penalty for simple assault, does not violate defendant's constitutional right to jury trial. U.S. Const. Amend. 6; D.C. Code 1981, § 16-705(b). *Johnson v. United States*, 700 A.2d 240, 1997 D.C. App. LEXIS 228 (1997).

Misdemeanor Streamlining Act, which mandates nonjury trial unless Constitution guarantees right to trial by jury or maximum penalty for offense exceeds 180 days' incarceration or \$1,000 fine, did not indicate that administrative convenience was given controlling weight in classifying offense as "petty" and one for which there is no constitutional right to jury trial. U.S.C. Const. Amend. 6; D.C. Code 1981, § 16-705(b). *Johnson v. United States*, 700 A.2d 240, 1997 D.C. App. LEXIS 228 (1997).

The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are, therefore, not entitled to a jury trial. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

Absent any legislation to the contrary on the part of the City Council, the government's right to try a defendant without a jury in the streamlined offenses is proper in the District of Columbia. The D.C. City Council has enacted legislation, the Omnibus Criminal Justice Reform Amendment Act, which, by its very terms, limits a defendant's right to demand a jury trial in streamlined petty offenses. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

### Taking property without right.

Defendant charged with taking property without right is not entitled to a jury trial. D.C. Code 1981, § 16-705(b)(1). *Simmons v. United*

*States*, 554 A.2d 1167, 1989 D.C. App. LEXIS 36 (1989).

### Waiver of jury trial.

#### — Authority of court, waiver of jury trial.

Arraigning judge was authorized both to accept defendant's jury trial waiver and to set the case for a nonjury trial. D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rules 10, 23(a), 109. *Sparks v. United States*, 358 A.2d 307, 1976 D.C. App. LEXIS 275 (1976).

#### — Factors, waiver of jury trial.

Defendant knowingly and voluntarily waived her right to trial by jury on charge of simple assault where judge asked defendant, a college graduate, two questions which distinguished between trial by jury and trial by the court, judicial inquiry was concise, precise and clear, judge confirmed that defendant signed written explanatory waiver of jury trial form, defendant was represented by counsel, and at no time during trial proceedings did defendant claim that her jury trial waiver was not knowing or voluntary. U.S. Const. Amend. 6; D.C. Code 1981, § 16-705(a). *Little v. United States*, 665 A.2d 977, 1995 D.C. App. LEXIS 204 (1995).

Trial judge's inquiry regarding waiver of right to a jury trial by defendant, a native of Honduras who had five years of education; who was unable to speak English, and who had asserted right to jury trial, did not satisfy requirements under statute or rule; it was not even clear whether defendant's affirmative response was to whether judge could talk to her, what her name was, or whether she waived a jury, and there was no explanation as to requirement in jury trial that 12 jurors unanimously find her guilty beyond reasonable doubt. D.C. Code 1981, § 16-705(a); Criminal Rule 23(a). *Lopez v. United States*, 615 A.2d 1140, 1992 D.C. App. LEXIS 278 (1992).

#### — Failure to demand, waiver of jury trial.

Trial judge did not abuse his discretion in denying defendant's motion for mistrial because trial judge, in answering questions from individual jurors, invaded the province of the jury and deprived him of a trial by fair and impartial jurors, where defendant made no objection to the substance of the trial judge's responses that were addressed to jury en masse, and at the end of the judge's answers to jurors' written and oral questions, trial judge emphasized to jury that his responses to questions had been addressed to the jury as a whole. *Barnes v. United States*, 822 A.2d 1090, 2003 D.C. App. LEXIS 278 (2003).

Defendant's failure to demand jury trial on Minimum Wage Act violations did not waive his

right to jury trial, where defendant was entitled to counsel on charges of failure to pay wages, charges were tried together, and trial judge did not inform defendant of right to jury trial, which defendant probably did not know he had and of which any competent attorney would have advised him. U.S. Const. Amend. 6; D.C. Code 1981, §§ 36-103(1), 36-107, 36-213, 36-214. *Olevsky v. District of Columbia*, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

Right to a jury trial on charge of contempt of court for refusing to testify in criminal matter was voluntarily and intentionally waived when defendant, who was well aware from terms of contempt order that he was entitled to a trial by jury, failed to indicate to government or to court that he desired a jury trial and, in addition, submitted to court on record at show cause hearing. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S.C. Const. Amend. 6. In *re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

Fact that applicable statute required express waiver in open court of constitutional right to jury trial meant that it was irrelevant that attorney, who was fined \$500 in first proceeding for criminal contempt arising from failure to appear in three court-appointed cases and who was fined \$400 in second proceeding for criminal contempt for failure to pay \$500 fine, did not demand jury in his first trial. U.S. Const. Amend. 6; D.C. Code § 16-705(a). In *re Evans*, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

#### — In general.

A waiver of trial by jury does not occur unless defendant in open court and in writing expressly waives trial by jury and requests trial by court. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S. Const. Amend. 6. In *re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

A trial judge presented with a jury trial waiver request must determine whether in fact there has been an express, voluntary, and intentional relinquishment of right to trial by jury. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S. Const. Amend. 6. In *re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

When faced with jury trial waiver request, trial judge must determine whether, in fact, there has been intentional relinquishment or abandonment of known right or privilege. U.S. Const. Amend. 6; D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rule 23(a). *Hawkins v. United States*, 385 A.2d 744, 1978 D.C. App. LEXIS 508 (1978).

Assuming defendant appropriately waives his jury trial right, effectiveness of such waiver nonetheless may be conditioned on consent of prosecuting attorney and trial judge. U.S. Const. Amend. 6; D.C. Code § 16-705(a); D.C.

Code SCR, Criminal Rule 23(a). *Hawkins v. United States*, 385 A.2d 744, 1978 D.C. App. LEXIS 508 (1978).

In prosecution for false pretenses, where neither defendant nor his counsel objected to proceeding to trial without jury, there was discussion in open court at prior hearing in case concerning a jury trial for defendant and official court entry on information stated "Jury Trial Demand Withdrawn," absence from transcript of any express waiver of defendant's right to jury trial was cured. D.C. Code §§ 16-705(a), 22-1301. *Banks v. United States*, 262 A.2d 110, 1970 D.C. App. LEXIS 219 (App. 1970).

A waiver of jury trial need not be made and announced by defendant personally but may be done effectually through counsel. D.C. Code § 16-705(a). *Thompkins v. United States*, 251 A.2d 636, 1969 D.C. App. LEXIS 231 (App. 1969).

#### — Inquiry by judge, waiver of jury trial.

Where defendant has demanded jury trial, she must personally waive her right to jury trial both orally and in writing; oral waiver should be preceded by meaningful dialogue between judge and defendant in which judge is persuaded that defendant has elected voluntarily and knowingly to waive that right. D.C. Code 1981, § 16-705(a); Criminal Rule 23(a). *Lopez v. United States*, 615 A.2d 1140, 1992 D.C. App. LEXIS 278 (1992).

Trial court which is presented with request for waiver of jury trial is responsible for conducting oral inquiry of defendant in open court, defendant's replies to which indicate that he understands nature of his right to jury trial and that he chooses to waive that right, trial judge must also assure that such waiver is contained in the record as it occurred, and written waiver, signed by defendant, must accompany oral waiver. D.C. Code 1981, § 16-705; Criminal Rule 23(a). *Jackson v. United States*, 498 A.2d 185, 1985 D.C. App. LEXIS 480 (1985).

Failure of trial court, in prosecution for armed kidnapping, armed rape, armed robbery, and carrying pistol without license, to make oral inquiry of defendant himself to determine whether he was knowingly and voluntarily waiving his right to jury trial required reversal of conviction; combination of written waiver form with oral waiver by defense counsel was not legally sufficient to indicate knowing and voluntary jury trial waiver by defendant, particularly since question of defendant's mental competence was put in issue. U.S. Const. Amend. 6; D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rule 23(a). *Hawkins v. United States*, 385 A.2d 744, 1978 D.C. App. LEXIS 508 (1978).

In order for defendant's waiver of jury trial right to be effective, there must be oral inquiry of defendant himself in open court, his replies



to which indicate that he understands nature of his right to jury trial and that he chooses to waive that right; this oral waiver must accompany written waiver, signed by defendant. U.S. Const. Amend. 6; D.C. Code § 16-705(a); D.C. Code SCR, Criminal Rule 23(a). *Hawkins v. United States*, 385 A.2d 744, 1978 D.C. App. LEXIS 508 (1978).

Conviction following waiver of jury trial would be upheld despite absence of judicial inquiry made of defendant personally, in detail, to determine whether waiver was voluntary, where it was clear on the record that the waiver was knowledgeable, as there was a written waiver signed by defendant and an oral waiver by counsel, in defendant's presence and acquiesced in by him, as trial proceeded to conclusion without objection by defendant, and as defendant, who had history of mental illness, was adjudged competent to participate in and to understand the proceedings against him. D.C. Code §§ 16-705(a), 22-403; D.C. Code SCR Criminal Rule 23(a). *Hicks v. United States*, 296 A.2d 615, 1972 D.C. App. LEXIS 280 (1972).

The procedure contemplated by statute and rule with respect to waiver of trial by jury is an on-the-record inquiry of defendant himself by the trial judge in open court. D.C. Code § 16-705(a); D.C. Code SCR Criminal Rule 23(a). *Hicks v. United States*, 296 A.2d 615, 1972 D.C. App. LEXIS 280 (1972).

Where trial court failed to obtain from defendant himself and thereafter approve waiver of his right to trial by jury, conviction after trial by court of carrying a pistol without license was void even though defendant's counsel had stated that defendant requested trial by court. D.C. Code §§ 16-705(a), 22-3206; D.C. Code SCR, Criminal Rule 23(a). *Payne v. United States*, 292 A.2d 800, 1972 D.C. App. LEXIS 217 (1972).

In criminal prosecutions, where trial is had without jury, trial court is responsible for seeing to it by inquiry of defendant himself that he understands and knowingly and voluntarily waives his right to trial by jury and trial judge must also assure that such waiver is contained in record as it occurred rather than merely as a rubber stamp entry on back of information. D.C. Code § 16-705(a). *Banks v. United States*, 262 A.2d 110, 1970 D.C. App. LEXIS 219 (App. 1970).

The public interest in obtaining swift and certain justice for those charged with crime requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury but which are conducted without a jury contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. D.C. Code § 16-

705(a). *Banks v. United States*, 262 A.2d 110, 1970 D.C. App. LEXIS 219 (App. 1970).

In trials commenced after issuance of instant opinion, there should be in record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. D.C. Code § 16-705(a). *Banks v. United States*, 262 A.2d 110, 1970 D.C. App. LEXIS 219 (App. 1970).

Trial court did not err in accepting defendant's waiver of his right to jury trial on ground that court did not determine whether waiver was made intelligently and understandingly, where not only was an announcement by counsel made in defendant's presence of decision to waive but defendant was then advised of his right to jury trial and defendant expressed approval in open court of his counsel's announcement. D.C. Code § 16-705(a). *Thompkins v. United States*, 251 A.2d 636, 1969 D.C. App. LEXIS 231 (App. 1969).

#### — Written waiver of jury trial.

Lack of a written waiver of jury trial did not operate to vitiate intent or effect of that waiver when it was apparent that defendant was knowingly, intelligently, voluntarily, and expressly entering a waiver through counsel. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S. Const. Amend. 6. *In re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

#### Witnesses.

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses as distinguished from municipal ordinances, none of them was triable by jury. D.C. Code 1961, §§ 14-305, 16-705(b), 22-1107, 22-1112(a), 22-1121, 22-2701, 22-3302, 22-3304; U.S. Const. art. 3, § 2, cl. 3. *Pinkney v. United States*, 363 F.2d 696, 1966 U.S. App. LEXIS 5565 (C.A.D.C. 1966).

Any Brady violation by the prosecution in failing to disclose to defense counsel witnesses who could allegedly impeach testimony of government eyewitness by testifying that eyewitness had drunk a large amount of alcohol and left nightclub before incident occurred, in prosecution of defendants arising out of beating of homeless man and murder and assaults of passersby who tried to intervene, did not prejudice defendants, as required in order for defendants to obtain a new trial, as one of such witnesses nonetheless testified during the trial, such witnesses had provided inconsistent statements to police, and testimony of the eyewitness



ness was almost completely corroborated by other government witnesses, with the exception of eyewitness's testimony that one of the defendants threatened and assaulted her following the incident. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

Prosecution's violation of Brady, in trial of defendants arising out of beating of homeless man and murder and assaults of passersby who tried to intervene, by disclosing just before eyewitness testified the grand jury transcript of witness's testimony and information indicating that witness met with prosecution multiple times before acknowledging he had a memory

of the incident, did not prejudice defendants, as required in order for defendants to obtain a new trial, as defense counsel were still able to conduct an effective cross-examination, counsel exploited many other available grounds to attack witness's credibility, prosecution on redirect brought out witness's prior statements that he had no memory, it was obvious that witness had resisted prosecution's persistent questions regarding his knowledge of the incident, and the jury was made aware through other witnesses that the government's investigation of the incident had been heavy-handed. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

## § 16-706. Enforcement of judgments; commitment upon non-payment of fine.

The Superior Court may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, and subject to the relief provided in section 3569 of title 18, United States Code, in any case where the court imposes a fine, the court may, in the event of default in the payment of the fine imposed, commit the defendant for a term not to exceed one year.

(Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 556, Pub. L. 91-358, title I, § 145(d)(5).)

**Cross references.** — Victims of violent crime, assessment nonpayment sanctions in accordance with this section, see § 4-516.

**Prior Codifications.** — 1981 Ed., § 16-706. 1973 Ed., § 16-706.

**References in text.** — Section 3569 of Title 18 of the United States Code, referred to in the second sentence, provided for the discharge of indigent prisoners, and was repealed by § 212 of Pub. L. 98-472.

### CASE NOTES

#### ANALYSIS

Authority and discretion of court.  
Conflicts of law.  
In general.  
Indigent defendants.  
Length of imprisonment.  
Review.

#### Authority and discretion of court.

Because even an illegal alien has a right to due process, a court imposing a sentence in a criminal case may not treat the defendant more harshly than any other defendant solely because of his nationality or alien status; however, this does not mean that a sentencing court, in deciding what sentence to impose,

must close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

The sentencing court must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed; this discretion includes the right to consider information concerning other illegal acts in which the defendant has been involved if that information may reasonably bear on the sentencing decision. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Defendant's nationality and his status as an illegal alien were not impermissibly considered

as a basis for enhancing defendant's sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court; court imposed a heavy sentence not because of defendant's ethnicity or alien status, but because of his unlawful conduct, particularly his conduct in the five and one-half years since he entered his guilty pleas, his flight from justice, and his refusal to accept responsibility for his actions. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Sentencing court did not exceed its authority by telling prosecutor to take all necessary steps to effect defendant's deportation after he had served his sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court; the court simply reminded prosecutor of an obligation that he already knew about, it was not an "order" from the court to assure his deportation, it was not part of his sentence, and it appeared that the Immigration and Naturalization Service (INS) had already lodged a detainer against defendant before he was sentenced. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Imposition of an alternative jail term in default of payment of a fine is a valid exercise of the court's discretion. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper, not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. D.C. Code 1951, §§ 11 — 606, 11 — 616. *Hankins v. U.S.*, 120 A.2d 590, 1956 D.C. App. LEXIS 185 (Cr.App. 1956).

Court has power even without statutory authority to enforce payment of fine by confining defendant defaulting in payment. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

Alternative prison sentence for default in payment of fine can be imposed even though statute provides fine but no prison sentence. Code 1940, §§ 11-606, 11-616. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

#### Conflicts of law.

The general authority of court under earlier general statutes to order commitment of defendant defaulting in payment of fine is not limited by later special statute authorizing \$100 fine or 30 days imprisonment or both for drunkenness in specified places, and court could sentence defendant convicted of drunkenness in public

park to 150 days confinement in default of payment of \$75 fine, and the mere fact that alternative imprisonment exceeded term which could have been imposed on defendant as primary sentence did not make alternative sentence invalid. Code 1940, §§ 11-606, 11-616, 25-128(b). *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

#### In general.

Under common law, whenever a fine and imprisonment constitute a part of the judgment upon a conviction in a criminal case, the judgment, if the party is in court, is that he is committed to jail in execution of the sentence and until the fine is paid. *Ex parte Watkins*, 32 U.S. 568, 1833 U.S. LEXIS 361 (U.S. Dist. Col. 1833).

Supreme Court of District of Columbia may, in default of payment of fine, commit defendant to jail until fine is paid. *Dodd v. Peak*, 47 F.2d 430, 1931 U.S. App. LEXIS 3465 (1931).

Police Court of District of Columbia may in default of payment of fine commit defendant to jail for period not exceeding one year. D.C. Code T. 18, §§ 152, 155, 165. *Dodd v. Peak*, 47 F.2d 430, 1931 U.S. App. LEXIS 3465 (1931).

Superior court is authorized to order commitment for term as long as one year to enforce payment of court-ordered fine, provided purpose of such alternative is to compel payment of fine rather than to impose imprisonment for term longer than that specified for offense. D.C. Code § 16-706. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Imprisonment for nonpayment of fine is not penalty but is means of enforcing payment of fine. *Sawyer v. District of Columbia*, 238 A.2d 314, 1968 D.C. App. LEXIS 130 (App. 1968).

Imprisonment as method of compelling payment of fine may not be used in case of indigent who, although willing to do so, is without funds to pay the fine and avoid term of imprisonment. *Sawyer v. District of Columbia*, 238 A.2d 314, 1968 D.C. App. LEXIS 130 (App. 1968).

Statute authorizing court to commit defendant in default of payment of fine for term not exceeding one year provides means of enforcing punishment as distinguished from punishment provided by statute defining crime. D.C. Code 1961, § 11-715a. *Henderson v. United States*, 189 A.2d 132, 1963 D.C. App. LEXIS 206 (App. 1963).

Alternative sentence of imprisonment for failure to pay fine is not to be considered a part of the penalty for the crime. D.C. Code 1961, § 11-715a. *Henderson v. United States*, 189 A.2d 132, 1963 D.C. App. LEXIS 206 (App. 1963).

Where trial court imposed a money fine against defendant operator of automobile body



works for failure to file monthly Sales and Use tax returns as required by statute, trial court under statute could enforce payment of fine by ordering defendant in the alternative to serve a jail sentence. Act Cong. May 27, 1949, §§ 101 et seq., 148, 63 Stat. 112; D.C. Code 1940, § 11-606. *Perlich v. District of Columbia*, 90 A.2d 227, 1952 D.C. App. LEXIS 183 (Cr.App. 1952).

Alternative sentence of imprisonment in default in payment of fine is not imposed as part of penalty but to compel payment of fine, and imprisonment can be avoided by payment of fine, which cannot be done where imprisonment is the primary or original sentence. Code 1940, §§ 11-606, 11-616. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

The general statutes authorizing commitment of defendant defaulting in payment of fine provides means of enforcing punishment prescribed by special statute authorizing \$100 fine or 30 days imprisonment or both for drunkenness in specified places. Code 1940, §§ 11-606, 11-616, 25-128(b). *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

Sentences imposing fines or term in jail in default of paying fines were not illegal as jail sentences. D.C. Code 1940, § 11-606. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

### **Indigent defendants.**

Alternative sentence of 30 days in jail and fine of \$500 or 90 days in jail was not invalid on ground of denial of equal justice in assessing sentence without permitting fine to be collected through installment plan or suspending execution of sentence for fine on condition that defendant do specified daytime work to satisfy fine where record did not show that trial judge was aware of defendant's alleged indigency and defendant made no postsentence motion to vacate or modify judgment of fine or imprisonment in lieu of paying fine. *Harris v. United States*, 440 F.2d 240, 1971 U.S. App. LEXIS 12450 (C.A.D.C. 1971).

Municipal Court of District of Columbia is "court established by enactment of Congress" within Indigent Prisoners' Act authorizing indigent prisoner who has been imprisoned by "court established by enactment of Congress" for failure to pay fine, and who has been confined for 30 days, to apply for discharge. 18 U.S.C. § 3569. *Clemmer v. Alexander*, 295 F.2d 176, 1961 U.S. App. LEXIS 3555 (C.A.D.C. 1961).

Sentence for violation of District of Columbia vagrancy statute was for violation of "law of United States" within Indigent Prisoners' Act authorizing indigent prisoner, who has been sentenced for violation of any "law of United States," and who has been imprisoned for fail-

ure to pay fine, and who has been confined for 30 days, to apply for discharge. 18 U.S.C. § 3569; D.C. Code 1951, § 22-3302. *Clemmer v. Alexander*, 295 F.2d 176, 1961 U.S. App. LEXIS 3555 (C.A.D.C. 1961).

Person convicted in District of Columbia police court for violation of National Prohibition Act, and sentenced to jail on default in payment of fine, held entitled to benefit of statute authorizing release of indigent prisoners. D.C. Code 1929, T. 18, § 165; 18 U.S.C. § 3569; National Prohibition Act, 27 U.S.C. § 1 et seq. *Green v. Peak*, 65 F.2d 809, 1933 U.S. App. LEXIS 3170 (1933).

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to exceed ten days. D.C. Code §§ 1-224a, 16-706. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Rule that superior court may order commitment for term as long as one year to enforce payment of court-ordered fine has exception where record discloses that defendant is indigent and that court must have been aware of his inability to pay fine, and in such case alternative sentence should not exceed maximum prescribed for offense. D.C. Code § 16-706. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Request by defense counsel that 30-day grace period be granted to raise money to pay \$100 fine was tantamount to notice of indigency, for purpose of determining whether defendant was entitled to benefit of rule that alternative jail sentence imposed on indigent should not exceed maximum prescribed for offense. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

If defendant who had been permitted to proceed in forma pauperis was indigent, so much of judgment of conviction for possession of heroin as provided for imprisonment in default of payment of \$1,000 fine should be vacated. D.C. Code § 33-402. *Simms v. United States*, 276 A.2d 434, 1971 D.C. App. LEXIS 302 (1971).

Where defendant is indigent, sentence of imprisonment in default of payment of fine which exceeds maximum term of imprisonment which could be imposed under substantive statute as original sentence is an invalid exercise of court's discretion. D.C. Code 1967, § 40-603(g). *Sawyer v. District of Columbia*, 238 A.2d 314, 1968 D.C. App. LEXIS 130 (App. 1968).

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if

she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. D.C. Code 1961, §§ 11-715a, 11-776(b), 22-2701. *Henderson v. United States*, 189 A.2d 132, 1963 D.C. App. LEXIS 206 (App. 1963).

The Federal Poor Convict law permitting an indigent person committed in default of payment of fine to secure his release after thirty days applies to one committed by trial court under a law of the United States but does not apply to one committed under a local statute or ordinance. 18 U.S.C. § 3569. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

Rev.St.U.S. § 1042, 18 U.S.C. § 3569, declaring that when a poor convict, sentenced by a United States court, after imprisonment of 30 days for nonpayment of a fine or of fine and costs, shall make affidavit of his inability to pay the fine, and it shall appear that he is unable to pay, and that he has no property exceeding \$20 in value, except such as is exempt by law from execution, such convict, on taking oath as to his property, shall be discharged, applies to any and all persons convicted and sentenced to pay a fine by any of the United States courts sitting in the District of Columbia. *Ex parte Norvell*, 20 D.C. 348 (D.C.Sup. 1892).

#### **Length of imprisonment.**

Alternative prison sentence in default of payment of fine is not invalid by fact that default may require defendant to serve a term greater than could have been imposed on him in form of straight prison sentence. Code 1940, §§ 11-606, 11-616. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

Where statute authorizes fine or imprisonment or both and both are imposed, defendant defaulting in payment of fine may be committed for additional term after expiration of term to which sentenced, even though total of the two terms exceeds maximum sentence provided in statute. Code 1940, §§ 11-606, 11-616. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

Alternative sentence of imprisonment in default in payment of fine should be used only to compel payment of fine and should not be used to impose longer term of imprisonment than is permitted by law or to confine poor person longer than person with means. Code 1940, §§ 11-606, 11-616. *Peeples v. District of Columbia*, 75 A.2d 845, 1950 D.C. App. LEXIS 172 (Cr.App. 1950).

#### **Review.**

So long as the sentence imposed is within statutory limits, the Court of Appeals will not disturb it unless it has a "fundamental defect." *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Issue as to whether sentencing court impermissibly considered defendant's national origin and his status as an illegal alien when imposing an enhanced sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court would be reviewed for plain error, where defendant made assertion for first time on appeal and said nothing about such issue before the trial court. *Yemson v. United States*, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of \$300 and in default of payment to be imprisoned for an additional year. D.C. Code 1951, §§ 11-606, 11-616. *Hankins v. U.S.*, 120 A.2d 590, 1956 D.C. App. LEXIS 185 (Cr.App. 1956).

## **§ 16-707. Disposition of fines.**

(a) All fines payable and paid under judgment of the criminal division of the Superior Court of the District of Columbia shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Superior Court of the District of Columbia.



(Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6).)

**Prior Codifications.** — 1981 Ed., § 16-707. 1973 Ed., § 16-707.

### § 16-708. Penalties for wrongful conversion of forfeitures and fines.

Whoever, being an agent as contemplated and defined by section 16-704(a), or by section 16-707(a), wrongfully converts to his own use any money received by him as provided therein, is guilty of theft, and shall be punished in the manner prescribed by law for such offense.

(Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; Dec. 1, 1982, D.C. Law 4-164, § 601(a), 29 DCR 3976.)

**Cross references.** — Theft, see § 22-3211.

**Prior Codifications.** — 1981 Ed., § 16-708. 1973 Ed., § 16-708.

**Legislative history of Law 4-164.** — Law 4-164, the "District of Columbia Theft and White Collar Crimes Act of 1982," was introduced in Council and assigned Bill No. 4-133,

which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on June 22, 1982, July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on August 4, 1982, it was assigned Act No. 4-238 and transmitted to both Houses of Congress for its review.

### § 16-709. Executions on forfeited recognizances and judgments.

The Superior Court of the District of Columbia may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal.

(Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6).)

**Prior Codifications.** — 1981 Ed., § 16-709. 1973 Ed., § 16-709.

### § 16-710. Suspension of imposition or execution of sentence.

(a) Except as provided in subsection (b), in criminal cases in the Superior Court of the District of Columbia, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof, for such time and upon such terms as it deems best, if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, or the imposition of sentence and the suspension of the execution of a portion thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written

statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent.

(b) The period of probation referred to in subsection (a), together with any extension thereof, shall not exceed 5 years.

(b-1) The court may order as a condition of probation for any defendant convicted of a felony that the defendant remain in custody or in a community correctional center during nights, weekends, or other intervals totaling not more than one year during the term of probation.

(c) Nothing in this section shall be deemed to supersede the provisions of section 22-1804a.

(Dec. 23, 1963, 77 Stat. 559, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(d)(6); Mar. 10, 1983, D.C. Law 4-202, § 3, 30 DCR 173; Aug. 2, 1983, D.C. Law 5-24, § 2, 30 DCR 3341; June 8, 2001, D.C. Law 13-302, § 3, 47 DCR 7249.)

**Prior Codifications.** — 1981 Ed., § 16-710. 1973 Ed., § 16-710.

**Effect of amendments.** — D.C. Law 13-302 added subsec. (b-1).

**Emergency legislation.** — For temporary (90 day) amendment of section, see §§ 3 and 11 of the Sentencing Reform Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-462, November 7, 2000, 47 DCR 9443).

For temporary (90 day) amendment of section, see § 3 of Sentencing Reform Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-2, February 2, 2001, 48 DCR 2239).

For temporary (90 day) amendment of section, see § 3 of Sentencing Reform Second Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-51, May 2, 2001, 48 DCR 4370).

**Legislative history of Law 4-202.** — For legislative history of D.C. Law 4-202, see Historical and Statutory Notes following § 16-711.

**Legislative history of Law 5-24.** — Law 5-24, the “Technical and Clarifying amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 13-302.** — Law 13-302, the “Sentencing Reform Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-696, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-406 and transmitted to both Houses of Congress for its review. D.C. Law 13-302 became effective on June 8, 2001.

## CASE NOTES

### ANALYSIS

Conditions on probation.  
Constitutional issues.  
Construction and operation.  
Contempt.  
Factors.  
Review.  
Split sentences.  
Work release.

### Conditions on probation.

Generally, judicial discretion in formulating terms and conditions of probation is limited by the requirement that the conditions be reasonably related to the rehabilitation of the con-

victed person and the protection of the public. *Gotay v. United States*, 805 A.2d 944, 2002 D.C. App. LEXIS 505 (2002).

Court could impose precondition that defendant be admitted to drug-treatment facility outside the District of Columbia in order for part of defendant's sentence for second-degree burglary to be suspended; court had authority to suspend sentence “for such time and upon such terms” as it deemed best, and terms of probation requiring drug treatment were reasonably related to rehabilitation. *Olden v. United States*, 781 A.2d 740, 2001 D.C. App. LEXIS 210 (2001).

Trial judge did not exceed her authority un-



der Youth Rehabilitation Act in imposing requirement that offender pay child support as condition of probation. D.C. Code 1981, §§ 24-801 to 24-807. *Brown v. United States*, 579 A.2d 1158, 1990 D.C. App. LEXIS 217 (1990).

Trial judge abused her discretion in setting amount of child support payment imposed as condition of probation under Youth Rehabilitation Act, where she imposed condition that youth offender pay child support of \$50 per week without making findings as to needs of his children and his ability to pay and in absence of demand for payment from children's mother. D.C. Code 1981, §§ 24-801 to 24-807. *Brown v. United States*, 579 A.2d 1158, 1990 D.C. App. LEXIS 217 (1990).

This section has been held to authorize the trial court to grant probation upon conviction of solicitation. *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988).

### **Constitutional issues.**

District of Columbia prisoner failed to establish his custody, pursuant to second violator warrant, was in violation of Constitution, laws, or treaties of United States, and thus grant of § 2241 habeas relief was not warranted; prisoner had received prison sentence within lawful range, had received credit for time served prior to his release on probation, and, upon revocation of probation, had forfeited all time spent on probation. *Foster v. Wainwright*, 820 F.Supp.2d 36, 2011 U.S. Dist. LEXIS 123606 (2011).

There is no constitutional right to counsel in a probation revocation hearing. U.S. Const. Amend. 6. *United States v. Allgood*, 48 F.Supp.2d 554, 1999 U.S. Dist. LEXIS 6173 (1999).

There is no requirement, constitutional or otherwise, that a district court inform a defendant that he or she has a right to appeal the outcome of a probation revocation hearing. Fed.R.Cr.Proc. Rules 32.1, 32(c)(5), 18 U.S.C. *United States v. Allgood*, 48 F.Supp.2d 554, 1999 U.S. Dist. LEXIS 6173 (1999).

Due process gives a probationer at a revocation hearing a qualified right to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing confrontation. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

While the Confrontation Clause dictates the manner in which witnesses give testimony in criminal trials, commanding not that evidence be reliable but that reliability be assessed by testing in the crucible of cross-examination, probation revocation is governed by the minimum requirements of due process, a process flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary crim-

inal trial. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Probation revocation is not a stage of a criminal prosecution, and so the full panoply of rights due a defendant in a criminal prosecution does not apply to such revocation proceedings; rather, probation revocation is more in the nature of an administrative hearing concerned with the probationer's rehabilitation. *Young v. United States*, 863 A.2d 804, 2004 D.C. App. LEXIS 642 (2004).

Though sentence received by defendant, when trial court corrected an earlier illegal split sentence, was harsher than the original sentence to extent that defendant would only be eligible for release after six years instead of the release being mandatory, the corrective sentence did not violate defendant's due process rights, in light of fact that such sentence was as close as judge could come to meeting her original sentencing objectives and that judge did not act vindictively in imposing the corrective sentence. D.C. Code § 16-710; U.S. Const. Amend. 5. *Allen v. United States*, 431 A.2d 27, 1981 D.C. App. LEXIS 303 (1981).

In order to revoke probation of defendant consistent with due process, probationer must have acted, or failed to act, in a way that foreseeably could result in revocation. D.C. Code § 24-104; U.S. Const. Amend. 5. *Carradine v. United States*, 420 A.2d 1385, 1980 D.C. App. LEXIS 373 (1980).

Trial court deprived defendant of due process by revoking his probation solely on basis of his mental problems, in that maintenance or achievement of a particular level of mental stability was not an implied condition of his probation, and defendant could not have foreseen that his request for additional psychiatric assistance would be deemed the equivalent of a probation violation. D.C. Code § 24-104; U.S. Const. Amend. 5. *Carradine v. United States*, 420 A.2d 1385, 1980 D.C. App. LEXIS 373 (1980).

### **Construction and operation.**

A term of supervised release constitutes part of a court's "sentence," within meaning of statute generally allowing the court, upon conviction, to suspend the imposition of sentence or impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof. *Boykins v. United States*, 856 A.2d 606, 2004 D.C. App. LEXIS 427 (2004).

District of Columbia work release statute was not verbatim adoption of any one of four statutes which Congress considered in drafting it, and thus, construction of those statutes was not controlling in construing District of Columbia statute. D.C. Code 1981, § 22-461 et seq.; Md.Code 1957, Art. 27, § 645K et seq.; N.C.G.S. § 148-33.1; M.S.A. § 631.425, subd.

5; W.S.A. 56.065(4)(b). *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

Legislative history of Federal Probation Act may be used as extrinsic aid in construing District of Columbia Probation Act, though legislative history of the federal act is to be given less weight than legislative history of the District of Columbia act. D.C. Code § 16-710; 18 U.S.C. § 3651. *Davis v. United States*, 397 A.2d 951, 1979 D.C. App. LEXIS 277 (1979).

### Contempt.

Trial court may impose restitution as separate sentence enforceable through its contempt power, or as condition of defendant's probation. D.C. Code 1981, § 16-711. *Jones v. United States*, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

Only sanction which can be imposed for defendant's violation of condition of probation is revocation of probation and imposition of all or part of original sentence; violations may not be punished through finding of contempt. D.C. Code 1981, § 24-104. *Jones v. United States*, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

Court which had lost jurisdiction to revoke defendant's probation once probationary period expired could not punish defendant for his failure to make restitution, in accordance with terms of probation, by holding defendant in contempt. D.C. Code 1981, § 24-104. *Jones v. United States*, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

Criminal contempt citation, with imposition of sentence suspended, was an appealable final order. D.C. Code 1981, § 16-710. *In re Siracusa*, 458 A.2d 408, 1983 D.C. App. LEXIS 336 (1983).

Criminal contempt citation, with imposition of sentence suspended, was an appealable final order. D.C. Code 1981, § 16-710. *In re Siracusa*, 445 A.2d 663, 1982 D.C. App. LEXIS 360 (1982).

### Factors.

Trial judge, who knew that defendant had been convicted for the same offense on at least three prior occasions and had received nine-month probation term on last conviction for soliciting for prostitution and who also knew that defendant was supporting children and had allegedly secured a job which was to begin in a month, did not abuse his discretion in imposing the maximum sentence, then suspending that sentence and ordering a three-year term of probation. *Simmons v. United States*, 461 A.2d 463, 1983 D.C. App. LEXIS 370 (1983).

### Review.

A remand was necessary to determine whether the district court denied probation on ground that the Federal Probation Act, forbid-

ding probation in the case of an offense punishable by death or life imprisonment, applied to a conviction in the district court solely of an offense under the District of Columbia Code, or on ground that, by reference to the terms of the Code under which probation was sentencing option available, it was within its discretion under all the circumstances to deny probation. 18 U.S.C. § 2255; 18 U.S.C. § 3651; D.C. Code 1973, §§ 11-502(3), 22-2901, 22-3202; 26 U.S.C. § 5861(d). *United States v. Garnett*, 653 F.2d 558, 1981 U.S. App. LEXIS 14304 (C.A.D.C. 1981).

Court of Appeals would not consider issue concerning legality of imposition of one year of unsupervised probation on defendant convicted of simple assault when trial court did not actually impose sentence on defendant where legality of sentence issue was not presented to trial court. D.C. Code 1981, § 16-710(a). *Little v. United States*, 665 A.2d 977, 1995 D.C. App. LEXIS 204 (1995).

In absence of attempt by the government or the court to impose sentence or order probation for defendant, who, following plea of guilty to simple assault, was granted suspended imposition of sentence without a subsequent entrance of a formal judgment of conviction, question whether the government or court could do so was not appropriate for resolution. *Clayton v. United States*, 429 A.2d 1381, 1981 D.C. App. LEXIS 269 (1981).

The Court of Appeals may not overturn a decision to revoke probation unless there has been an abuse of discretion. D.C. Code § 24-104. *Jones v. United States*, 401 A.2d 473, 1979 D.C. App. LEXIS 351 (1979).

Where trial court did not impose sentence and stay its execution before placing defendant, who was convicted of possessing marijuana, on probation, case would be remanded for resentencing in accordance with sentencing statute applicable to the superior court. D.C. Code § 16-710. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

### Split sentences.

Unexecuted "backup" portion of partially executed sentence could not be imposed, even if defendant violated conditions of his supervised release, where District of Columbia sentencing court had not imposed probation, and instead had proceeded under mistaken belief that United States Parole Commission, which would be supervising defendant, would be able to impose the unexecuted backup sentence. *Boykins v. United States*, 856 A.2d 606, 2004 D.C. App. LEXIS 427 (2004).

A sentencing court can suspend part of a sentence, without being obligated to impose a period of probation. *Boykins v. United States*, 856 A.2d 606, 2004 D.C. App. LEXIS 427 (2004).



Request for split sentence of period of confinement, with execution of all but six months suspended, followed by term of probation was contrary to design and plan of Federal Youth Corrections Act in that split sentence necessarily detracted from administrative authority to release entrusted by the Act to administrators of programs. 18 U.S.C. § 5005 et seq. *Clark v. United States*, 416 A.2d 717, 1980 D.C. App. LEXIS 327 (1980), writ of certiorari denied by 449 U.S. 922, 101 S. Ct. 323, 66 L. Ed. 2d 151, 1980 U.S. LEXIS 3631, 49 U.S.L.W. 3289 (1980).

Superior court judges of District of Columbia lack authority to impose a split sentence by use of Federal Probation Act in circumstances where accused is being committed under provisions of Federal Youth Corrections Act. 18 U.S.C. §§ 3651, 5005 et seq. *Clark v. United States*, 416 A.2d 717, 1980 D.C. App. LEXIS 327 (1980), writ of certiorari denied by 449 U.S. 922, 101 S. Ct. 323, 66 L. Ed. 2d 151, 1980 U.S. LEXIS 3631, 49 U.S.L.W. 3289 (1980).

Split sentence, unaccompanied by conditions and an order of probation, was authorized un-

der this section, but was not authorized by D.C. Code § 22-2703; § 22-2703 controls and sentence was, therefore, not authorized. *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988).

#### **Work release.**

Work release is remedial statute, not penal, as it ameliorates harshness of jail term, minimizes stigma of complete imprisonment and aims at rehabilitation of prisoners, rather than having punishment as its primary purpose. D.C. Code 1981, § 22-461 et seq. *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

Restitution does not undermine purpose of work release statutes. D.C. Code 1981, § 22-461 et seq. *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

Although one goal of work release statute may be to enable prisoner to support his family and dependents, its primary purpose is to maintain prisoner's morale, self-respect, dignity and rehabilitation. D.C. Code 1981, § 22-461 et seq. *Davidson v. United States*, 467 A.2d 1282, 1983 D.C. App. LEXIS 511 (1983).

## **§ 16-711. Restitution or reparation.**

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

(d) At any time during the probation period or period of restitution or reparation, the defendant may request and the court may grant a hearing on any matter related to the plan of restitution or reparation.

(Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

**Prior Codifications.** — 1981 Ed., § 16-711.

### **CASE NOTES**

#### **ANALYSIS**

Attorney discipline.

Damages.

In general.

Victim testimony.

#### **Attorney discipline.**

"Restitution," within meaning of bar rule providing that attorney may be required to

make restitution to persons financially injured by attorney's conduct, should not aim at making client whole, but rather, term refers to payment by attorney reimbursing former client for money, interest, or thing of value that client has paid or entrusted to attorney in course of representation; consequential damages are more appropriately determined in civil adjudication. Bar Rule XI, § 3(b). *In re Robertson*,

## § 16-711.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

612 A.2d 1236, 1992 D.C. App. LEXIS 180 (1992).

Court of Appeals cannot adopt recommendation that it order "restitution" in attorney discipline proceeding if that recommendation goes beyond scope of what court's rules allow, even if attorney has not effectively contested recommendation. Bar Rule XI, § 3(a)(2). In re Robertson, 612 A.2d 1236, 1992 D.C. App. LEXIS 180 (1992).

Attorney's failure to contest restitution order recommended by Board on Professional Responsibility is not functional equivalent of "consent decree." In re Robertson, 612 A.2d 1236, 1992 D.C. App. LEXIS 180 (1992).

### **Damages.**

Term "actual damage" as used in restitution statute includes liquidated damages such as medical expenses, lost wages, and other expenses connected with the crime but does not include those damages which are not presently and readily measurable. Sloan v. United States, 527 A.2d 1277, 1987 D.C. App. LEXIS 381 (1987).

Restitution need not include only liquidated or easily measurable damages but may also include compensation for pain and suffering and other nonliquidated losses. United States v. Braider, 112 WLR 1441 (Super. Ct. 1984).

### **In general.**

Defendant's timely written submission to trial court questioning restitution component of sentence for second-degree burglary and aggravated assault could properly be considered challenge to correctness of restitution element of sentence, and denial of that motion was properly before Court of Appeals for review. D.C. Code 1981, §§ 16-711(a), 22-504.1, 22-1801(b); Criminal Rule 35(a). Southall v. United States, 716 A.2d 183, 1998 D.C. App. LEXIS 127 (1998).

Defendant failed to preserve for appellate review issue that restitution order was not sufficiently detailed where defendant failed to raise issue in timely motion for correction or reduction of sentence filed within 120 days of sentencing. D.C. Code 1981, §§ 16-711, 23-110. Holland v. United States, 584 A.2d 13, 1990 D.C. App. LEXIS 317 (1990).

Double jeopardy clause was violated when, after sentencing judge ordered restitution as condition of probation in one case, another judge in another case ordered same restitution to same victim as condition of probation in that case, even though that victim had nothing to do with second case. U.S. Const. Amend. 5. Hardy v. United States, 578 A.2d 178, 1990 D.C. App. LEXIS 188 (1990).

Trial court may impose restitution as separate sentence enforceable through its contempt power, or as condition of defendant's probation. D.C. Code 1981, § 16-711. Jones v. United States, 560 A.2d 513, 1989 D.C. App. LEXIS 117 (1989).

Defendant, who was convicted of assault with a dangerous weapon, has no right to a jury trial or to an evidentiary hearing on the issue of restitution at the sentencing hearing. United States v. Braider, 112 WLR 1441 (Super. Ct. 1984).

Since the court may impose restitution as an independent sentence apart from probation, the expiration of the term of probation will not end defendant's obligation to pay restitution. United States v. Braider, 112 WLR 1441 (Super. Ct. 1984).

### **Victim testimony.**

Participation by the victim in restitution proceedings is not improper where court provides defendant with a trial-type proceeding. United States v. Braider, 112 WLR 1441 (Super. Ct. 1984).

## § 16-711.01. Restitution or reparation — Enforcement.

(a) An order of restitution or reparation requiring a person convicted of the criminal conduct to pay restitution or reparation constitutes a judgment and lien against all property of a liable defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property.

(b) A judgment of restitution or reparation may be enforced by the United States Attorney for the District of Columbia, the Attorney General for the District of Columbia, a victim entitled under the order to receive restitution or reparation, a deceased victim's estate, or any other beneficiary of the judgment in the same manner as a civil judgment.

(c) The court shall provide each victim in a criminal case with a notarized and sealed copy of the Order of Restitution or Reparation.



(d) The name and address of the victim shall not be disclosed to the defendant or any representative of the defendant.

(June 3, 2011, D.C. Law 18-377, § 4(2), 58 DCR 1174.)

**Emergency legislation.** — For temporary (90 day) addition of § 16-711.01, see § 504(2) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) addition of § 16-711.01, see § 504(2) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

**Legislative history of Law 18-377.** — Law

18-377, the “Criminal Code Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

## § 16-712. Community service.

(a) In criminal cases in the Superior Court of the District of Columbia, the court may, in addition to any other sentence imposed, require a person convicted of any offense as a condition of probation or as a sentence itself, to undertake reasonable services to the community for a period not to exceed 5 years in duration.

(b) When community service is ordered, the court shall take into consideration the physical and mental health of the defendant, his or her age, education, employment and vocational training, family circumstances, financial condition, and any other factors as shall be appropriate.

(c) The court shall fix the manner of performing community service.

(d) At any time during the probation period or period of community service, the defendant may request and the court may grant a hearing on any matter related to the plan of community service.

(Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

**Cross references.** — Panhandling, community service sanctions, see § 22-2304.

**Prior Codifications.** — 1981 Ed., § 16-712.

**Legislative history of Law 4-202.** — For legislative history of D.C. Law 4-202, see Historical and Statutory Notes following § 16-711.

## CASE NOTES

### Right to jury trial.

The restriction on defendant's liberty resulting from community service did not approximate the deprivation of liberty of incarceration, and the imposition of 100 hours of community service, well within statutory limitations, did not render an otherwise petty offense serious enough to warrant a jury trial, and community service could not be analogized to a fine; court ordered defendant to perform 100 hours of community service as part of her two-year probation, a sentence that was well within the discretion granted to the court by law. *Phyllis*

*Goodwine v. United States*, 990 A.2d 965, 2010 D.C. App. LEXIS 138 (2010).

Defendant was not entitled to jury trial upon being charged with violation of dog-leash regulation, subjecting him to a maximum fine of \$300 or imprisonment for not more than 10 days, notwithstanding a sentencing judge's authority to impose, for any offense, the additional requirement of up to five years of community service. *Wasserman v. District of Columbia*, 959 A.2d 1139, 2008 D.C. App. LEXIS 433 (2008).

## § 16-713. Alien sentencing.

(a) Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime, the court shall administer the following advisement on the record to the defendant:

“If you are not a citizen of the United States, you are advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

(b) Upon request, the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement. If the court fails to advise the defendant as required by subsection (a) and the defendant shows that conviction of the offense to which the defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. Absent a record that the court provided the advisement required by subsection (a), the defendant shall be presumed not to have received the required advisement.

(Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

**Prior Codifications.** — 1981 Ed., § 16-713.  
**Legislative history of Law 4-202.** — For

legislative history of D.C. Law 4-202, see Historical and Statutory Notes following § 16-711.

## CASE NOTES

## ANALYSIS

Burden of proof.  
 Construction under prior law.  
 Estoppel.  
 In general.  
 Motion to vacate plea.  
 Possibility of deportation.  
 Purpose.  
 Statements by court.

**Burden of proof.**

Once a defendant complies with statutory requirements of setting forth in his motion to withdraw guilty plea that the trial court failed to give required warnings regarding immigration consequences of pleading guilty and that, because of this failure, he has experienced one of the enumerated adverse immigration consequences, the burden shifts to the government to demonstrate that the warnings were in fact given. *Valdez v. United States*, 906 A.2d 284, 2006 D.C. App. LEXIS 498 (2006).

**Construction under prior law.**

Under prior law, determination of whether defendant who had entered guilty plea without

full knowledge of risk of deportation should be permitted to withdraw his plea was committed to sound discretion of trial court. D.C. Code 1981, §§ 16-713, 16-713(a, b). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

**Estoppel.**

Defendant was judicially estopped from arguing in his petition for a writ of coram nobis that the trial court violated statute that required the court, before accepting a plea of guilty or nolo contendere, to advise the defendant that the conviction could have consequences affecting his or her immigration status, where defendant stated, under oath, that he was a United States citizen. *Mason v. United States*, 956 A.2d 63, 2008 D.C. App. LEXIS 386 (2008).

**In general.**

Lack of an official record of defendant's plea proceeding did not automatically trigger the statutory presumption that he did not receive the required warnings regarding the immigration consequences of pleading guilty, for purposes of determining whether defendant could withdraw his plea; governing statute simply



required the production of "a record" that the court provided the required advisement, not an "official record," and thus a reconstructed record could constitute "a record" that the required warnings were given. *Valdez v. United States*, 906 A.2d 284, 2006 D.C. App. LEXIS 498 (2006).

Statute governing alien sentencing, which statute has purpose of ensuring notice to aliens of consequences of guilty plea, requires that alien defendant be notified that conviction could result in deportation, exclusion from United States, or denial of naturalization. D.C. Code 1981, § 16-713. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Statute mandating trial court to vacate any guilty plea upon request if it was entered by defendant who risked deportation but was not so informed did not apply retroactively to defendant who pled guilty to armed robbery prior to effective date of statute. D.C. Code 1981, §§ 16-713, 16-713(a, b). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

#### **Motion to vacate plea.**

Defendant seeking to withdraw guilty plea to two burglary-related charges, on ground that he was not advised of the immigration consequences of pleading guilty, failed to aver sufficient preliminary facts to trigger statutory presumption that he did not receive the required advisement, as required to shift burden to State to put forth a record that the warnings were in fact given; defendant's motion to withdraw plea stated, without a sworn affidavit, that he did not receive the required warnings, that transcripts of plea proceeding had been destroyed, and that he faced possible deportation, and such representations failed to make clear whether defendant was an alien at time he pled guilty and if his status remained unchanged. *Valdez v. United States*, 906 A.2d 284, 2006 D.C. App. LEXIS 498 (2006).

Alien defendant was entitled to withdraw his guilty plea to various drug offenses because trial court failed to give adequate warning in compliance with alien sentencing statute, in that court only mentioned deportation, and not exclusion or denial of naturalization, as consequences of defendant's guilty plea; defendant's conviction for aggravated felony had serious consequences in that alien with aggravated felony conviction could not become citizen for five years and alien with aggravated felony conviction who had been deported would be excluded from entering county for 20 years. *Van Slytman v. United States*, 804 A.2d 1113, 2002 D.C. App. LEXIS 485 (2002).

Where trial court fails to follow advice requirement of alien sentencing statute in accepting a guilty plea, the presence or absence of

assertion of innocence by alien defendant is not relevant to decision whether to grant motion to withdraw that plea. D.C. Code 1981, § 16-713. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Determination of whether interests of justice require that guilty plea be vacated subsequent to sentencing is governed by manifest injustice standard of Superior Court Criminal Rule 32(e). D.C. Code 1981, § 16-713; Criminal Rule 32(e). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

To prevail on motion to vacate plea of guilty, movant must establish either that Rule 11 proceeding was substantially defective or that interests of justice require plea to be vacated. D.C. Code 1981, § 16-713(b); Civil Rule 11. *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Allowing defendant to withdraw his guilty plea 14 years after proceeding on charge of attempted distribution of cocaine would be unfair and unjust, even though defendant claimed that his recollection was that he was not advised of potential consequences of plea, where there was no transcript or evidence to support defendant's assertion and government would be severely prejudiced in its ability to prosecute the case. *U.S. v. Peddie*, 135 WLR 1801 (Super. Ct. 2007).

#### **Possibility of deportation.**

Before accepting alien defendant's guilty plea to criminal contempt, trial court failed to administer statutorily-required advisement that conviction could have affected his immigration status if he was not a United States Citizen; although court had read the required advisement earlier in the plea proceeding, that advisement applied only an assault charge, statute required issuance of advisement prior to acceptance of any offense punishable as a crime, and court used no language that suggested to defendant that the prior advisement applied to the distinct and quite different offense of criminal contempt. *Bautista v. United States*, 10 A.3d 154, 2010 D.C. App. LEXIS 734 (2010).

Trial court placed alien defendant on notice of possibility of deportation and exclusion, as required by statute governing alien sentencing, when court warned defendant, prior to accepting guilty pleas to misdemeanor drug offenses, that if defendant was deported, she could be barred from re-entry at some future date. D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Trial court placed alien defendant on notice that her efforts to become naturalized could be thwarted, as required by statute governing alien sentencing, when court warned defendant, prior to accepting guilty pleas to misde-

meanor drug offenses, that Immigration and Naturalization Service (INS) could decide whether to allow her to remain in United States or to return her to Liberia. D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Under prior law, Rule 11 did not require trial court to inform defendant of potential collateral consequences of his plea, including possibility of deportation, at proceeding for entry of guilty plea. D.C. Code 1981, § 16-713(b); Civil Rule 11. *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

Interests of justice did not require that guilty plea be vacated due to defendant's failure to be informed of possibility of deportation, where defendant failed to raise issue despite making numerous collateral attacks on his sentence in seven years since he entered plea and five years since receiving order to show cause why he should not be deported; such lengthy delay in raising issue undermined defendant's belated claim that he would not have entered his guilty plea had he only known of potential for his deportation. D.C. Code 1981, §§ 16-713, 16-713(b); Civil Rule 11; Criminal Rule 32(e). *Alpizar v. United States*, 595 A.2d 991, 1991 D.C. App. LEXIS 215 (1991).

#### **Purpose.**

Purpose behind statute governing alien sentencing is to ensure notice to aliens of the consequences of a guilty plea. *Van Slytman v. United States*, 804 A.2d 1113, 2002 D.C. App. LEXIS 485 (2002).

Purpose of statute governing alien sentencing is to ensure that aliens are advised of possible immigration and naturalization consequences that may arise following entry of plea of guilty or nolo contendere. D.C. Code 1981, § 16-713. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

#### **Statements by court.**

Even without a contemporaneous formal record of a plea proceeding, there are other acceptable ways to establish that the required warnings regarding the immigration consequences of pleading guilty were given; an affi-

davit from the judge who accepted the plea which contained necessary details would be more than adequate, and an affidavit from a courtroom clerk, law clerk, attorney or some other responsible person with knowledge of the circumstances may also be sufficient. *Valdez v. United States*, 906 A.2d 284, 2006 D.C. App. LEXIS 498 (2006).

Trial court's warning which specifically mentioned only deportation as consequence of alien defendant's guilty plea, coupled with court's generalized reference to the need to deal with immigration authorities, did not substantially comply with alien sentencing statute, requiring that court, prior to acceptance of guilty plea, warn defendant that consequences of conviction encompass three possible distinct consequences, namely deportation, exclusion, and denial of naturalization. *Van Slytman v. United States*, 804 A.2d 1113, 2002 D.C. App. LEXIS 485 (2002).

When a trial judge warns of deportation only, such a warning does not give sufficient notice to an alien defendant of the possibility of exclusion or denial of naturalization and, thus, does not substantially comply with alien sentencing statute, requiring that court, prior to acceptance of guilty plea, warn defendant that consequences of conviction encompass three possible distinct consequences, namely deportation, exclusion, and denial of naturalization. *Van Slytman v. United States*, 804 A.2d 1113, 2002 D.C. App. LEXIS 485 (2002).

Trial court's incorrect statements to alien defendant, prior to accepting guilty pleas to misdemeanor drug offenses, that Immigration and Naturalization Service (INS) might not even bother acting on defendant's convictions and that INS had "complete discretion" impermissibly lulled defendant into false sense of security, and thus, defendant was entitled to withdraw pleas. Immigration and Nationality Act, §§ 237(a)(2)(B)(i), 240A(b)(1)(C), 244(c)(2)(B)(i), as amended, 8 U.S.C. §§ 1227(a)(2)(B)(i), 1229b(b)(1)(C), 1254a(c)(2)(B)(i); D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).



## CHAPTER 8. CRIMINAL RECORD SEALING.

Sec.

16-801. Definitions.

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16-803. Sealing of public criminal records in other cases.

Sec.

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**§ 16-801. Definitions.**

For the purposes of this chapter, the term:

(1) “Clerk” means the Clerk of the Superior Court of the District of Columbia.

(2) “Completion of the sentence” means the person has been unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest.

(3) “Conviction” means the judgment (sentence) on a verdict or a finding of guilty, a plea of guilty or a plea of nolo contendere, or a plea or verdict of not guilty by reason of insanity.

(4) “Court” or “Superior Court” means the Superior Court of the District of Columbia.

(5) “Disqualifying arrest or conviction” means:

(A) A conviction in any jurisdiction after the arrest or conviction for which the motion to seal has been filed;

(B) A pending criminal case in any jurisdiction;

(C) A conviction in the District of Columbia for an ineligible felony or ineligible misdemeanor or a conviction in any jurisdiction for an offense that involved conduct that would constitute an ineligible felony or ineligible misdemeanor if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct that is substantially similar to that of an ineligible felony or ineligible misdemeanor.

(6) “Eligible felony” means a failure to appear (§ 23-1327);

(7) “Eligible misdemeanor” means any misdemeanor that is not an ineligible misdemeanor.

(8) “Ineligible felony” means any felony other than a failure to appear (§ 16-1327) [§ 23-1327].

(9) “Ineligible misdemeanor” means:

(A) An intrafamily offense, as defined in § 16-1001(8);

(B) Driving while intoxicated, driving under the influence, and operating while impaired (§ 50-2201.05);

(C) A misdemeanor offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, whether or not the registration period has expired;

(D) Criminal abuse of a vulnerable adult (§ 22-936(a));

(E) Interfering with access to a medical facility (§ 22-1314.02);

(F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2) [see now § 22-4503(a)(1)]);

(G) Failure to report child abuse (§ 4-1321.07);

- (H) Refusal or neglect of guardian to provide for child under 14 years of age (§ 22-1102);
- (I) Disorderly conduct (peeping tom) (§ 22-1321);
- (J) Misdemeanor sexual abuse (§ 22-3006);
- (K) Violating the Sex Offender Registration Act (§ 22-4015);
- (L) Violating child labor laws (§§ 32-201 through 32-224);
- (M) Election/Petition fraud (§ 1-1001.08);
- (N) Public assistance fraud (§§ 4-218.01 through 4-218.05);
- (O) Trademark counterfeiting (§ 22-902(b)(1));
- (P) Attempted trademark counterfeiting (§§ 22-1803, 22-902);
- (Q) Fraud in the second degree (§ 22-3222(b)(2));
- (R) Attempted fraud (§§ 22-1803, 22-3222);
- (S) Credit card fraud (§ 22-3223(d)(2));
- (T) Attempted credit card fraud (§ 22-1803, 22-223) [§§ 22-1803, 22-3223];
- (U) Misdemeanor insurance fraud (§ 22-3225.03a);
- (V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);
- (W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));
- (X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);
- (Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));
- (Z) Attempted identify theft (§§ 22-1803, 22-3227.02, 22-3227.03);
- (AA) Fraudulent statements or failure to make statements to employee (§ 47-4104);
- (BB) Fraudulent withholding information or failure to supply information to employer (§ 47-4105);
- (CC) Fraud and false statements (§ 47-4106);
- (DD) False statement/dealer certificate (§ 50-1501.04(a)(3));
- (EE) False information/registration (§ 50-1501.04(a)(3));
- (FF) No school bus driver's license (18 DCMR § 1305.1);
- (GG) False statement on Department of Motor Vehicles document (18 DCMR § 1104.1);
- (HH) No permit — 2nd or greater offense (§ 50-1401.01(d));
- (II) Altered title (18 DCMR § 1104.3);
- (JJ) Altered registration (18 DCMR § 1104.4);
- (KK) No commercial driver's license (§ 50-405);
- (LL) A violation of building and housing code regulations;
- (MM) A violation of the Public Utility Commission regulations; and
- (NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-1803, 22-1805a).
- (10) "Minor offense" means a traffic offense, disorderly conduct, or an offense that is punishable by a fine only, excluding any ineligible misdemeanor.
- (11) "Public" means any person, agency, organization, or entity other than:
  - (A) Any court;
  - (B) Any federal, state, or local prosecutor;
  - (C) Any law enforcement agency;
  - (D) Any licensing agency with respect to an offense that may disqualify a person from obtaining that license;



(E) Any licensed school, day care center, before or after school facility or other educational or child protection agency or facility;

(F) Any government employer or nominating or tenure commission with respect to:

(i) Employment of a judicial or quasi-judicial officer; or

(ii) Employment at a senior-level, executive-grade government position.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; Mar. 25, 2009, D.C. Law 17-368, § 4(e), 56 DCR 1338; Dec. 10, 2009, D.C. Law 18-88, § 401, 56 DCR 7413.)

**Effect of amendments.** — D.C. Law 17-368, in par. (9)(A), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

D.C. Law 18-88, in par. (9)(Z), substituted “Attempted identify theft” for “Attempted theft”.

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 401 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 401 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

**Legislative history of Law 16-307.** — Law 16-307, the “Criminal Record Sealing Act of 2006”, was introduced in Council and assigned Bill No. 16-746, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-631 and transmitted to

both Houses of Congress for its review. D.C. Law 16-307 became effective on May 5, 2007.

**Legislative history of Law 17-368.** — Law 17-368, the “Intrafamily Offenses Act of 2008”, was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

**Legislative history of Law 18-88.** — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

## § 16-802. Sealing of criminal records on grounds of actual innocence.

(a) A person arrested for or charged with the commission of a criminal offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion with the Clerk at any time to seal all of the records of the arrest and related court proceedings on grounds of actual innocence.

(b) The burden is on the movant to establish that:

(1) The offense for which the person was arrested or charged did not occur; or

(2) The movant did not commit the offense.

(c) If the motion is filed within 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by a preponderance of the evidence.

(d) If the motion is filed more than 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by clear and convincing evidence.

(e) In determining such motions, the court may, but is not required to, employ a rebuttable presumption that the movant is not entitled to relief if the court finds that the government has been substantially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(f) An acquittal does not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

(g) A person whose conviction has been vacated pursuant to § 22-4135(g)(2), and whose subsequent prosecution is terminated without conviction, may file a motion with the Clerk pursuant to subsection (a) of this section or any other provision of law.

(h) A person who is found to be actually innocent pursuant to this section or § 22-4135(g)(3) shall be entitled to the following relief with respect to such count or counts:

(1)(A) The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.

(B) A copy of the order shall be provided to the movant or his or her counsel.

(C) The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

(2)(A) In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed.

(B) The Court shall order that the movant's name be redacted to the extent practicable from records that are not sealed. The Court may make an in camera inspection of these records in order to make this determination.

(C) The Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving the co-defendants.

(D) After references to the movant have been redacted as provided for in this paragraph, the Court shall order those records relating to co-defendants returned to the prosecutor or the Clerk.

(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(4) The Court shall:

(A) Order the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to seal any records that identify the movant as having been arrested, prosecuted, or convicted;

(B) Order the prosecutor to arrange for any computerized record of the movant's arrest, prosecution, or conviction to be eliminated except for a



restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court; and

(C) Expressly allow the prosecutor and law enforcement agencies to maintain a publicly available record so long as it is not retrievable by the identification of the movant.

(5) The Court shall order the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to file a certification with the Court within 90 days of an order to seal the records that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been sealed.

(6) The Court shall:

(A) Order the Clerk to collect all Court records pertaining to the movant's arrest, record, or conviction and cause to be purged any computerized record;

(B) Expressly allow the Clerk to maintain a record so long as the record is not retrievable by the identification of the movant; and

(C) Order the Clerk to file under seal all Court records retrieved pursuant to this section, together with the certifications filed by the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency pursuant to this subsection, within 7 days after receipt of such records.

(7) The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality. Unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested or charged. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.

### **§ 16-803. Sealing of public criminal records in other cases.**

(a) A person arrested for, or charged with, the commission of an eligible misdemeanor pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

(1) A period of at least 2 years has elapsed since the termination of the case; and

(2) The movant does not have a disqualifying arrest or conviction.

(b) A person arrested for, or charged with, the commission of any other offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

(1) A period of at least 5 years has elapsed since the termination of the case; and

(2) The movant does not have a disqualifying arrest or conviction.

(c) A person who has been convicted of an eligible misdemeanor or an eligible felony pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction if:

(1) A period of at least 10 years has elapsed since the completion of the movant's sentence; and

(2) The movant does not have a disqualifying arrest or conviction.

(d) The waiting periods in subsections (a), (b), and (c) of this section, before which a motion to seal cannot be filed, must be satisfied with respect to all of the movant's arrests and convictions unless the movant waives in writing the right to seek sealing of an arrest or conviction as to which the prescribed waiting period has not elapsed.

(e) The waiting periods in subsections (a), (b), and (c) of this section may be waived by the prosecutor in writing.

(f) The movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a particular conviction or arrest.

(g) In determining whether a movant is eligible to file a motion to seal because of a conviction, arrest, or pending charge, minor offenses shall not be considered.

(h)(1) The Superior Court shall grant a motion to seal if it is in the interests of justice to do so. In making this determination, the Court shall weigh:

(A) The interests of the movant in sealing the publicly available records of his or her arrest, related court proceedings, or conviction;

(B) The community's interest in retaining access to those records, including the interest of current or prospective employers in making fully informed hiring or job assignment decisions and the interest in promoting public safety; and

(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability.

(2) In making this determination, the Court may consider:

(A) The nature and circumstances of the offense at issue;

(B) The movant's role in the offense or alleged offense and, in cases terminated without conviction, the weight of the evidence against the person;

(C) The history and characteristics of the movant, including the movant's:

(i) Character;

(ii) Physical and mental condition;

(iii) Employment history;



- (iv) Prior and subsequent conduct;
- (v) History relating to drug or alcohol abuse or dependence and treatment opportunities;
- (vi) Criminal history; and,
- (vii) Efforts at rehabilitation;
- (D) The number of the arrests or convictions that are the subject of the motion;
- (E) The time that has elapsed since the arrests or convictions that are the subject of the motion;
- (F) Whether the movant has previously obtained sealing or comparable relief under this section or any other provision of law other than by reason of actual innocence; and
- (G) Any statement made by the victim of the offense.

(i)(1) In a motion filed under subsection (a) of this section, the burden shall be on the prosecutor to establish by a preponderance of the evidence that it is not in the interests of justice to grant relief.

(2) In a motion filed under subsection (b) of this section, the burden shall be on the movant to establish by a preponderance of the evidence that it is in the interests of justice to grant relief.

(3) In a motion filed under subsection (c) of this section, the burden shall be on the movant to establish by clear and convincing evidence that it is in the interests of justice to grant relief.

(j) A motion to seal made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time. The Court may set a waiting period before a renewed motion can be filed.

(k) A motion to seal made pursuant to this section may be dismissed if it appears that the movant has unreasonably delayed filing the motion and that the government has been prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(l) If the Court grants the motion to seal:

(1)(A) The Court shall order the prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency to remove from their publicly available records all references that identify the movant as having been arrested, prosecuted, or convicted.

(B) The prosecutor's office and agencies shall be entitled to retain any and all records relating to the movant's arrest and conviction in a nonpublic file.

(C) The prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been removed from its publicly available records.

(2)(A) The Court shall order the Clerk to remove or eliminate all publicly available Court records that identify the movant as having been arrested, prosecuted, or convicted.

(B) The Clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

(3)(A) In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be redacted.

(B) The Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving co-defendants.

(4) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(5) Unless otherwise ordered by the Court, the Clerk and any other agency shall reply in response to inquiries from the public concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(m) No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose except that the sealing of records under this provision does not relieve a person of the obligation to disclose the sealed arrest or conviction in response to any direct question asked in connection with jury service or in response to any direct question contained in any questionnaire or application for a position with any person, agency, organization, or entity defined in § 16-801(11).

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.

## § 16-804. Motion to seal.

(a) A motion to seal filed with the Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.

(b)(1) A motion pursuant to § 16-803 shall state all of the movant's arrests and convictions and shall either:

(A) Seek relief with respect to all arrests and any conviction eligible for relief; or

(B) Waive in writing the right to seek sealing of the records pertaining to any omitted arrests or convictions, including any arrests or convictions as to which the relevant waiting period in § 16-803(a), (b), or (c) has not elapsed.

(2) If the motion does not comply with the requirements of paragraph (1) of this subsection or the waiting period has not elapsed for any arrest or conviction that is eligible for sealing, then the motion shall be dismissed without prejudice unless the movant executes a written waiver with respect to that arrest or conviction.

(c) A copy of the motion shall be served upon the prosecutor.



(d) The prosecutor shall not be required to respond to the motion unless ordered to do so by the Court pursuant to § 16-805(b).

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.

## § 16-805. Review by Court.

(a) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss or deny the motion.

(b) If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion. The prosecutor shall file the response within 60 days of the issuance of the order except where the arrest was not presented to the prosecutor for a charging decision, in which case the prosecutor shall file the response within 90 days of the issuance of the order.

(c) Upon the filing of the prosecutor's response, the Court shall determine whether a hearing is required.

(d) If the Court determines that a hearing is required, the hearing shall be scheduled promptly.

(e) At the hearing, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

(f) An order dismissing, granting, or denying the motion shall be in writing and include reasons.

(g) The Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant regarding the same offenses, arrests, or convictions unless the previous motion was dismissed or denied without prejudice.

(h) An order dismissing, granting, or denying a motion for sealing is a final order for purposes of appeal.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.

## § 16-806. Availability of sealed records.

(a) Records sealed on grounds of actual innocence pursuant to § 16-802 shall be opened only on order of the Court upon a showing of compelling need, except that, upon request, the movant shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under § 16-802 was granted. A request for access to sealed court records may be made ex parte.

(b) Records retained in a nonpublic file pursuant to § 16-803 shall be available:

(1) To any court, prosecutor, or law enforcement agency for any lawful purpose, including:

- (A) The investigation or prosecution of any offense;
- (B) The determination of whether a person is eligible to have an arrest or conviction sealed or expunged;
- (C) The determination of conditions of release for a subsequent arrest;
- (D) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;
- (E) Determining an appropriate sentence if the person is subsequently convicted of another crime; and
- (F) Employment decisions.

(2) For use in civil litigation relating to the arrest or conviction;

(3) Upon order of the Court for good cause shown;

(4) To any person or entity identified in § 16-801(11)(D), (E), or (F), but only to the extent that such records would have been available to such persons or entities before relief under § 16-803 was granted. Such records may be used for any lawful purpose, including:

(A) The determination of whether a person is eligible to be licensed in a particular trade or profession; and

(B) Employment decisions; and

(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief under § 16-803 was granted.

(c) Any person, upon making inquiry of the Court concerning the existence of records of arrest, court proceedings, or convictions involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available under § 16-802(h)(7) or § 16-803(l)(5) with respect to any issue about that person's knowledge of the individual's record.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.

## § 16-807. Savings provision.

This chapter does not supersede any other provision of the District of Columbia Official Code providing for the expungement, sealing, or setting aside of criminal arrests or convictions.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868.)

**Legislative history of Law 16-307.** — For Law 16-307, see notes following § 16-801.



## CHAPTER 8A. THIRD-PARTY CUSTODY.

Sec.	Sec.
16-831.01. Definitions.	16-831.08. Factors to consider in determining best interests of child.
16-831.02. Action for custody of child by a third party.	16-831.09. Pendente lite relief.
16-831.03. Action for custody of a child by a de facto parent.	16-831.10. Effect of a third-party custody order.
16-831.04. Third-party custody orders.	16-831.11. Modification or termination of orders.
16-831.05. Parental presumption.	16-831.12. Jurisdiction.
16-831.06. Award of custody to third party.	16-831.13. Other actions for custody not abolished, diminished, or preempted.
16-831.07. Findings necessary to rebut the parental presumption by clear and convincing evidence.	

**§ 16-831.01. Definitions.**

For the purposes of this chapter, the term:

(1) “De facto parent” means an individual:

(A) Who:

(i) Lived with the child in the same household at the time of the child’s birth or adoption by the child’s parent;

(ii) Has taken on full and permanent responsibilities as the child’s parent; and

(iii) Has held himself or herself out as the child’s parent with the agreement of the child’s parent or, if there are 2 parents, both parents; or

(B) Who:

(i) Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody;

(ii) Has formed a strong emotional bond with the child with the encouragement and intent of the child’s parent that a parent-child relationship form between the child and the third party;

(iii) Has taken on full and permanent responsibilities as the child’s parent; and

(iv) Has held himself or herself out as the child’s parent with the agreement of the child’s parent, or if there are 2 parents, both parents.

(2) “Intrafamily offense” shall have the same meaning as provided in § 16-1001(8).

(3) “Legal custody” means legal responsibility for a child, including the right to:

(A) Make decisions regarding the child’s health, education, and general welfare;

(B) Access the child’s educational, medical, psychological, dental, or other records; and

(C) Speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(4) “Physical custody” means a child’s living arrangements. The term “physical custody” includes a child’s residency or visitation schedule.

## § 16-831.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(5) “Third party” means a person other than the child’s parent or de facto parent.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(b), 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-368, § 4(f), 56 DCR 1338.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

D.C. Law 17-368, in par. (2), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — Law 17-21, the “Safe and Stable Homes for Children and Youth Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-41

which was referred to the Committees of Human Services and Public Safety and Judiciary. The Bill was adopted on first and second readings on June 5, 2007, and June 21, 2007, respectively. Signed by the Mayor on July 9, 2007, it was assigned Act No. 17-70 and transmitted to both Houses of Congress for its review. D.C. Law 17-21 became effective on September 20, 2007.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## § 16-831.02. Action for custody of child by a third party.

(a)(1) A third party may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child under any of the following circumstances:

(A) The parent who is or has been the primary caretaker of the child within the past 3 years consents to the complaint or motion for custody by the third party;

(B) The third party has:

(i) Lived in the same household as the child for at least 4 of the 6 months immediately preceding the filing of the complaint or motion for custody, or, if the child is under the age of 6 months, for at least half of the child’s life; and

(ii) Primarily assumed the duties and obligations for which a parent is legally responsible, including providing the child with food, clothing, shelter, education, financial support, and other care to meet the child’s needs; or

(C) The third party is living with the child and some exceptional circumstance exists such that relief under this chapter is necessary to prevent harm to the child; provided, that the complaint or motion shall specify in detail why the relief is necessary to prevent harm to the child.

(2) A third party who is employed by the child’s parent to provide child care duties for that child may not file, under this chapter, a complaint for custody of that child or intervene in any existing action under this chapter involving custody of that child.

(b)(1) At any time after the filing of a third-party complaint for custody or a motion to intervene, a parent may move to dismiss an action filed by a third party on the grounds that the third party has committed an intrafamily offense against the child, the child’s parent, or any other member of the child’s family, or that the third party does not meet the characteristics set forth in subsection (a) of this section.



(2) The court shall dismiss the action within 30 days of receiving proof that a court of competent jurisdiction has found that the third party has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family.

(3) Whenever the parent alleges that the plaintiff has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family, but no previous adjudication has been issued, the court shall schedule a hearing on the motion to dismiss within 30 days of receiving the allegation.

(c)(1) The court may decide a third-party complaint or motion to intervene filed under this chapter notwithstanding any other matters pending before the court involving the child, except that any complaint or motion filed under this chapter involving a child who is the subject of a pending action brought under Chapter 23 of Title 16 shall be consolidated with that pending action for resolution by the judicial officer there presiding.

(2) In a proceeding under this chapter consolidated with a neglect or termination of parental rights proceeding under Chapter 23 of Title 16, the parent of the child is entitled to be represented by counsel at all critical stages of the proceeding, and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with § 16-2304(b) and the rules established by the Superior Court of the District of Columbia.

(3) The court, in its discretion, may appoint counsel for the third party.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(c), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## CASE NOTES

### Construction and application.

Minor child's continued custody with maternal aunt, following grant of maternal aunt's petition seeking custody of child in father's custody, would be governed by provisions of

subsequently enacted Safe and Stable Homes for Children and Youth Amendment Act. K.R. v. C.N., 969 A.2d 257, 2009 D.C. App. LEXIS 62 (2009).

## § 16-831.03. Action for custody of a child by a de facto parent.

(a) A de facto parent may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child.

(b) An individual who establishes that he or she is a de facto parent by clear and convincing evidence shall be deemed a parent for the purposes of §§ 16-911, 16-914, 16-914.01, and 16-916, and for the purposes of this chapter if a third party is seeking custody of the child of the de facto parent.

(c)(1) All proceedings involving a parent and a de facto parent, including an

## § 16-831.04 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

action for child support, shall be governed by §§ 16-911, 16-914, 16-914.01, and 16-916.

(2) A custody proceeding involving a third party and a de facto parent shall be governed by the provisions of this chapter.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(d), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.04. Third-party custody orders.

(a) A custody order entered under this chapter may include any of the following:

- (1) Sole legal custody to the third party;
- (2) Sole physical custody to the third party;
- (3) Joint legal custody between the third party and a parent;
- (4) Joint physical custody between the third party and a parent; or
- (5) Any other custody arrangement the court determines is in the best interests of the child.

(b) An order granting relief under this chapter shall be in writing and shall recite the findings upon which the order is based.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(e), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.05. Parental presumption.

(a) Except when a parent consents to the relief sought by the third party, there is a rebuttable presumption in all proceedings under this chapter that custody with the parent is in the child's best interests.

(b) If the court grants custody of the child to a third party over parental objection, the court order shall include written findings of fact supporting the rebuttal of the parental presumption.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(f), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary

(90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).



**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.06. Award of custody to third party.

(a) The court shall award custody of the child to the third party upon determining:

- (1) The presumption in favor of parental custody has been rebutted; and
- (2) Custody with the third party is in the child's best interests.

(b) The third party seeking custody shall bear the burden of rebutting the parental presumption by clear and convincing evidence.

(c) In any proceeding under this chapter, the court may appoint counsel for the parent of the child should the court deem it appropriate in the interest of justice. The court also may appoint a guardian ad litem for the child and counsel for the third party.

(d)(1) Notwithstanding any other provision of this chapter, the court shall enter an order for any custody arrangement that is agreed to by the parents and the proposed custodian or custodians, including custody based on revocable parental consent, unless clear and convincing evidence indicates that the arrangement is not in the best interests of the child.

(2) If one parent agrees and the other parent does not timely object after having been properly served with process and the proposed arrangement, the arrangement shall be deemed to be agreed to by the parents.

(3) In any proceeding to assess a proposed arrangement under this subsection, the proposed custodian or custodians shall be full parties.

(e) If custody is awarded under this chapter to a third party, the court shall issue an order that provides for frequent and continuing contact between the parents and the child and encouraging love, affection, and contact between the child and the parents, unless the court determines that such an order is not in the best interest of the child.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(g), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## CASE NOTES

### Construction and application.

Minor child's continued custody with maternal aunt, following grant of maternal aunt's petition seeking custody of child in father's custody, would be governed by provisions of

subsequently enacted Safe and Stable Homes for Children and Youth Amendment Act. K.R. v. C.N., 969 A.2d 257, 2009 D.C. App. LEXIS 62 (2009).

**§ 16-831.07. Findings necessary to rebut the parental presumption by clear and convincing evidence.**

(a) To determine that the presumption favoring parental custody has been rebutted, the court must find, by clear and convincing evidence, one or more of the following factors:

(1) That the parents have abandoned the child or are unwilling or unable to care for the child;

(2) That custody with a parent is or would be detrimental to the physical or emotional well-being of the child; or

(3) That exceptional circumstances, detailed in writing by the court, support rebuttal of the presumption favoring parental custody.

(b) The court shall not consider a parent's lack of financial means in determining whether the presumption favoring parental custody has been rebutted.

(c) The court shall not use the fact that a parent has been the victim of an intrafamily offense against the parent in determining whether the presumption favoring parental custody has been rebutted.

(d) If the court concludes that the parental presumption has not been rebutted by clear and convincing evidence, the court shall dismiss the third-party complaint and enter any appropriate judgment in favor of the parent. The court shall only address the factors set forth in § 16-831.08 once the presumption favoring parental custody has been rebutted.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(h), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

**§ 16-831.08. Factors to consider in determining best interests of child.**

(a) In determining whether custody with a third party, pursuant to this chapter, is in the child's best interests, the court shall consider all relevant factors, including:

(1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the third-party complainant or movant; and



(4) To the extent feasible, the child's opinion of his or her own best interests in the matter.

(b) There shall be a rebuttable presumption that granting custody to a third party who has committed an intrafamily offense is not in the best interest of the child.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(i), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.09. Pendente lite relief.

(a)(1) During the pendency of any proceeding under this chapter, the court may determine, in accordance with the provisions of this chapter, the custody of the child pending final determination of that issue.

(2) The pendente lite hearing shall be held no later than 30 days after a party requests a pendente lite custody determination by the court.

(3) The court may enter any appropriate pendente lite relief pursuant to the provisions of this chapter.

(4) Except when all parties consent to the pendente lite order, the court shall issue written findings.

(b)(1) Unless the parties agree otherwise, any pendente lite order shall include a date certain for trial on the complaint or motion, not to exceed 120 days from issuance of the pendente lite order.

(2) Extensions of the trial date will not be routinely granted. Only upon motion of a party or on the court's own motion and a showing of good cause may the trial date be extended. Any order extending the trial date shall be accompanied by written findings.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(j), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.10. Effect of a third-party custody order.

An order awarding physical or legal custody of a child to a third party shall not terminate the parent and child relationship, including:

(1) The right of the child to inherit from his or her parent;

(2) The parent's right to visit or contact the child, except as limited by court order;

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- (3) The parent's right to consent to the child's adoption;
- (4) The parent's right to determine the child's religious affiliation; and
- (5) The parent's responsibility to provide financial, medical, and other support for the child.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(k), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.11. Modification or termination of orders.

(a) An award of custody to a third party under this chapter may be modified or terminated upon the motion of any party, or on the court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interests of the child.

(b) When a motion to modify an award of custody to a third party under this chapter is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(c) Any award of custody based on revocable parental consent entered pursuant to the agreement of all parties under § 16-831.06(d) shall be immediately vacated and of no further effect upon the filing of a revocation by the consenting parent or the third party.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(l), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable Homes for Children and Youth Emergency

Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

## § 16-831.12. Jurisdiction.

The court shall retain jurisdiction to enforce, modify, or terminate a custody order issued under this chapter, subject to the provisions of Chapter 46 of this title, until the child reaches 18 years of age.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(m), 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable

Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.



**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

### § 16-831.13. Other actions for custody not abolished, diminished, or preempted.

Nothing in this chapter shall be construed to limit the ability of any person to seek custody of a child under any other statutory, common law, or equitable cause of action or to preempt any authority of the court to hear and adjudicate custody claims under the court's common law or equitable jurisdiction.

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(n), 56 DCR 1117.)

**Cross references.** — Family Court of the Superior Court, exclusive jurisdiction, see § 11-1101.

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Emergency legislation.** — For temporary (90 day) addition, see § 2(b) of Safe and Stable

Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

**Legislative history of Law 17-21.** — For Law 17-21, see notes following § 16-831.01.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

CHAPTER 9. DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

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- 16-901. Definitions.
- 16-902. Residency requirements.
- 16-903. Decree annulling marriage.
- 16-904. Grounds for divorce, legal separation, and annulment.
- 16-905. Revocation and enlargement of decree of legal separation.
- 16-906. Causes for absolute divorce arising after decree for separation.
- 16-907. Parent and child relationship defined.
- 16-908. Relationship not dependent on marriage or domestic partnership.
- 16-909. Proof of child's relationship to parents.
- 16-909.01. Establishment of paternity by voluntary acknowledgment and based on genetic test results.
- 16-909.02. Full faith and credit to parentage determinations by other states.
- 16-909.03. Voluntary paternity acknowledgment program for birthing hospitals.
- 16-909.04. Voluntary paternity acknowledgment program for birth records agency.
- 16-909.05. Mayor authorized to designate other sites for paternity acknowledgment program.
- 16-910. Assignment and equitable distribution of property.
- 16-911. Pendente lite relief.
- 16-912. [Repealed].
- 16-913. Alimony.
- 16-914. Custody of children.
- 16-914.01. Retention of jurisdiction as to alimony, custody of children, and child support.

Sec.

- 16-914.02. Child custody and visitation rights of parents during deployment for military service.
- 16-915. Change of name on divorce.
- 16-916. Maintenance of spouse [or domestic partner] and minor children; maintenance of former spouse [or domestic partner]; maintenance of minor children; enforcement.
- 16-916.01. Child Support Guideline.
- 16-916.01a. Appendices to § 16-916.01.
- 16-916.02. Child Support Guideline Commission.
- 16-916.03. Proceedings in which child support matters may be considered.
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§ 16-901. Definitions.

For the purposes of this chapter, the term:

(1) "Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent, through employment or otherwise, or for extraordinary medical expenses as defined in § 16-916(j)(1) [§ 16-916.01(j)(1)], or for other medical costs not covered by insurance.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5) "IV-D agency" means the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity estab-



lishment, and the establishment, modification, and enforcement of support orders.

(6) "IV-D case" means a case in which the IV-D agency provides services for the purpose of establishing paternity or establishing, modifying, or enforcing a child support obligation.

(6A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(7) "Health insurance coverage" means benefits consisting of amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body (provided directly, through insurance or reimbursement, or otherwise, and includes items and services) under any hospital or medical service policy or certificate, hospital, or medical service plan contract, or health maintenance organization contract offered by a health insurer that is available to either parent, under which medical services could be provided to a dependent child.

(8) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 560; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(1); June 18, 1991, D.C. Law 9-5, § 2(b), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(b), 38 DCR 4970; Apr. 20, 1999, D.C. Law 12-241, § 9, 46 DCR 905; Apr. 3, 2001, D.C. Law 13-269, § 106(b), 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 202(a), 51 DCR 1615; Apr. 4, 2006, D.C. Law 16-79, § 4(c), 53 DCR 1035; Mar. 20, 2008, D.C. Law 17-128, § 2(a), 55 DCR 1525; June 25, 2008, D.C. Law 17-177, § 10(a), 55 DCR 3696.)

**Prior Codifications.** — 1981 Ed., § 16-901.  
1973 Ed., § 16-901.

**Effect of amendments.** — D.C. Law 13-269 rewrote par. (2) which formerly read:

"(2) 'IV-D agency' means a District of Columbia agency responsible for the establishment and enforcement of a child support order and the establishment of paternity for Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility, or other public assistance recipients and nonpublic assistance recipients pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. 651 et seq.)."

D.C. Law 15-130 added par. (4).

D.C. Law 16-79 added pars. (1A) and (1B).

D.C. Law 17-128 rewrote the section.

D.C. Law 17-177 added par. (6A).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section,

see § 5(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 9 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 105(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(b) of Child Support and Welfare

Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

**Emergency legislation.** — For temporary amendment of section, see § 5(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(b) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(b) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 9 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 9 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 9 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 9 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(b) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 202(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

**Legislative history of Law 9-5.** — For legislative history of D.C. Law 9-5, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 9-39.** — For legislative history of D.C. Law 9-39, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 12-230.** — Law 12-230, the "Self-Sufficiency Promotion Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-557. The Bill was adopted on first and second readings on May 5, 1998, and July 30, 1998, respectively. Signed by the Mayor on August 18, 1998, it was assigned Act No. 12-443 and transmitted to both Houses of Congress for its review. D.C. Law 12-230 became effective on April 20, 1999.

**Legislative history of Law 12-241.** — Law 12-241, the "Self-Sufficiency Promotion Amend-



ment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

**Legislative history of Law 13-269.** — Law 13-269, the “Child Support and Welfare Reform Compliance Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

**Legislative history of Law 15-130.** — Law 15-130, the “Medical Support Establishment and Enforcement Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-219, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 28, 2004, it was assigned Act

No. 15-331 and transmitted to both Houses of Congress for its review. D.C. Law 15-130 became effective on March 30, 2004.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 17-128.** — Law 17-128, the “Child Support Compliance Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-291 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 29, 2008, it was assigned Act No. 17-277 and transmitted to both Houses of Congress for its review. D.C. Law 17-128 became effective on March 20, 2008.

**Legislative history of Law 17-177.** — Law 17-177, the “Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

## § 16-902. Residency requirements.

(a) Except as provided in subsection (b) of this section, no action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least 6 months next preceding the commencement of the action.

(b)(1) An action for divorce by persons of the same gender, even if neither party to the marriage is a bona fide resident of the District of Columbia at the time the action is commenced, shall be maintainable if the following apply:

(A) The marriage was performed in the District of Columbia; and

(B) Neither party to the marriage resides in a jurisdiction that will maintain an action for divorce.

(2) It shall be a rebuttable presumption that a jurisdiction will not maintain an action for divorce if the jurisdiction does not recognize the marriage.

(3) Any action for divorce as provided by this subsection shall be adjudicated in accordance with the laws of the District of Columbia.

(c) No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action.

(d) The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether the action shall be maintainable.

(e) If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of 6 months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 560; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 1; Apr. 7, 1977, D.C. Law 1-107, title I, § 101, 23 DCR 8737; May 31, 2012, D.C. Law 19-133, § 2, 59 DCR 2395.)

**Prior Codifications.** — 1981 Ed., § 16-902. 1973 Ed., § 16-902.

**Effect of amendments.** — D.C. Law 19-133 rewrote the section, which formerly read:

“No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six months next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of six months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only.”

**Legislative history of Law 1-107.** — Law 1-107, the “District of Columbia Marriage and Divorce Act,” was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 19-133.** — Law 19-133, the “Civil Marriage Dissolution Equality Act of 2012,” was introduced in Council and assigned Bill No. 19-526, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 20, 2012, it was assigned Act No. 19-330 and transmitted to both Houses of Congress for its review. D.C. Law 19-133 became effective on May 31, 2012.

## CASE NOTES

### ANALYSIS

Equity.  
Establishment of domicile.  
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### Equity.

Where cases adopting view, in other jurisdictions than District of Columbia, that divorce may be granted nonresident of state of forum on cross-petition in divorce action by resident thereof, though statute requires plaintiff in divorce action to be resident of such state for designated time, clearly indicate that plainest principles of equity furnished impulse for such

view, it will be adopted by Court of Appeals for District of Columbia in construing District Code prohibiting divorce decree in favor of one who has not been bona fide resident of District for at least one year before application therefor. D.C. Code 1940, § 16-401. *Daniels v. Souders*, 195 F.2d 780, 1952 U.S. App. LEXIS 3027 (C.A.D.C. 1952).

### Establishment of domicile.

Requirements for establishing domicile, for purposes of District of Columbia bona fide residency requirement for maintaining divorce action, are physical presence and an intent to abandon former domicile and remain in the District of Columbia for an indefinite period of time; a new domicile comes into being when the two elements coexist. D.C. Code § 16-902. *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

Where wife abandons her abode in District of Columbia and establishes a new abode in Virginia, if at any time during her stay in Virginia she forms the intention of remaining there



indefinitely, she acquires a domicile in Virginia and is no longer a resident of District of Columbia for purposes of filing divorce complaint, notwithstanding that she may have a floating intention to return to the District at some future time. D.C. Code 1951, § 16-401. *Adams v. Adams*, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).

#### Findings.

In wife's divorce suit, it was proper for trial court at conclusion of wife's case to make finding of fact as to whether wife was bona fide resident of District of Columbia for one year preceding filing of her complaint, as required by statute. D.C. Code 1951, § 16-401. *Adams v. Adams*, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).

#### In general.

Under the statute respecting granting of a divorce, jurisdiction is not conferred to grant a divorce to a nonresident plaintiff, and parties, cannot, even by consent, confer such jurisdiction. D.C. Code 1940, § 16-401. *Clark v. Clark*, 79 F.Supp. 722, 1939 U.S. Dist. LEXIS 3225 (D.D.C.1939).

In District of Columbia, courts usually require that a child be domiciled or temporarily present within the jurisdiction before custody can be determined; an exception to this rule may be found where both parents of the child are parties before the court in divorce litigation; the District of Columbia divorce laws require a certain nexus of the parties to the District of Columbia. D.C. Code § 16-902. *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

#### Motion for enlargement of judgment.

Residential requirement of District of Columbia statute providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion." D.C. Code 1951, §§ 16-401, 16-403. *Bottomley v. Bottomley*, 262 F.2d 23, 1958 U.S. App. LEXIS 3386 (C.A.D.C. 1958).

#### Place of cause for divorce.

Statute providing that no divorce shall be granted to person who has not been bona fide

resident of District of Columbia for at least two years for any cause occurring out of District and prior to plaintiff's residence therein, does not require two years residence where cause for divorce occurs outside District during period in which plaintiff is bona fide resident of District. D.C. Code 1951, § 16-401. *Orlans v. Orlans*, 238 F.2d 31, 1956 U.S. App. LEXIS 3981 (C.A.D.C. 1956).

#### Pleadings.

The provision of District of Columbia Code that no divorce shall be granted to anyone who has not been a bona fide resident of District for at least one year before application therefor did not require federal District Court to refuse to entertain wife's amended cross-complaint, charging husband's commission of adultery with one named therein as co-respondent and cross-defendant, in husband's divorce suit, even if cross-complainant lost her District domicile by moving to Maryland before filing amended cross-complaint. D.C. Code 1940, § 16-401. *Daniels v. Souders*, 195 F.2d 780, 1952 U.S. App. LEXIS 3027 (C.A.D.C. 1952).

#### Residence, generally.

For purposes of statute providing that no divorce shall be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause which shall have occurred out of District and prior to residence therein, the term "residence" means domicile. D.C. Code 1951, § 16-401. *Heater v. Heater*, 155 A.2d 523, 1959 D.C. App. LEXIS 376 (Cr.App. 1959).

Instruction that "residence" required by divorce statute does not necessarily mean technical legal domicile, but locality where social life is lived and where greatest publicity will be given by litigation concerning party's status, was erroneous. D.C. Code 1940, § 16-401. *McFarland v. U.S.*, 174 F.2d 538, 1949 U.S. App. LEXIS 2244 (C.A.D.C. 1949).

Under the codal provision forbidding divorce in favor of anyone who has not been a bona fide resident of the District of Columbia for at least one year next before the application therefor, "residence" means "domicile". D.C. Code 1940, § 16-401. *Rogers v. Rogers*, 130 F.2d 905, 1942 U.S. App. LEXIS 3241 (1942).

"Residence" as used in statute concerning granting of a divorce or annulment of a marriage means "domicile". D.C. Code 1961, § 16-401. *Gullo v. Gullo*, 192 A.2d 126, 1963 D.C. App. LEXIS 247 (App. 1963).

Under statute providing that a party who seeks a decree of nullity of marriage must be a bona fide resident of the District of Columbia for at least one year preceding the application, the term "residence" means domicile. D.C. Code

1951, § 16-401. *Koonin v. Hornsby*, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).

In statute requiring spouse suing for divorce to have had a bona fide residence in District of Columbia for one year preceding filing of complaint, the word "residence" means domicile. D.C. Code 1951, § 16-401. *Adams v. Adams*, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).

#### **Time of residence.**

District Court was without jurisdiction of a bill for divorce where plaintiff had not been a bona fide resident of the District of Columbia for at least one year before filing her complaint. D.C. Code 1940, § 16—401. *Clark v. Clark*, 79 F.Supp. 722, 1939 U.S. Dist. LEXIS 3225 (D.D.C.1939).

District of Columbia Court of General Sessions did not have jurisdiction of suit for annulment of marriage brought by husband who became a resident only about three months before the complaint was filed. D.C. Code 1961, § 16-401. *Gullo v. Gullo*, 192 A.2d 126, 1963 D.C. App. LEXIS 247 (App. 1963).

Exclusionary provisions of statute are in the conjunctive and cause of action for divorce must have occurred both outside of district and prior to residency in district before longer period of residence is required. D.C. Code 1951, § 16-401. *Oatley v. Oatley*, 161 A.2d 834, 1960 D.C. App. LEXIS 214 (Cr.App. 1960).

Plaintiff may maintain an action for divorce even though Superior Court has no personal jurisdiction over the defendant where the plaintiff is entitled to bring such an action by being a District of Columbia resident for at least six months before filing his complaint. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

#### **Time of separation.**

In view of trial court's findings that parties had lived separate and apart without cohabitation for period of one year next preceding commencement of wife's divorce action brought in January, 1977 and that husband had been resident of District of Columbia for at least six months preceding commencement of the action, decree of divorce should be granted under the District of Columbia Marriage and Divorce Act of 1977 enacted in April, 1977. D.C. Code §§ 16-902, 16-904(a)(2). *Moore v. Moore*, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

Where, at time of trial, person seeking divorce on ground of voluntary separation was required to prove such separation for one year prior to filing of complaint and court did not find that separation was voluntary at its inception, it became incumbent upon court to find when separation became voluntary and, in absence of such finding, there was no support for

determination that jurisdictional prerequisite had been satisfied and proceeding must be remanded. D.C. Code §§ 16-902, 16-904, 16-917. *Williams v. Williams*, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).

For purposes of statute requiring two years' residence within district as prerequisite to divorce for cause which occurred out of district and prior to residence therein, voluntary separation or desertion as basis for divorce occurs when time element required by statute lapses rather than when parties initially separate. D.C. Code 1951, § 16-401. *Oatley v. Oatley*, 161 A.2d 834, 1960 D.C. App. LEXIS 214 (Cr.App. 1960).

#### **Void marriages.**

Even though a marriage is void ab initio without being so decreed for reason that husband had a previous undissolved marriage, where a judicial decree of nullity is sought in District of Columbia, the petitioning party is required to establish that she has been a bona fide resident of District for at least one year preceding the petition for annulment. D.C. Code 1951, § 16-401. *Koonin v. Hornsby*, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).

#### **Weight and sufficiency of evidence.**

Evidence supported finding that wife, suing for divorce, was a resident of New York and not of the District of Columbia, and justified decree dismissing suit. D.C. Code 1940, § 16-401. *Metcalf v. Metcalf*, 142 F.2d 102, 1944 U.S. App. LEXIS 3267 (1944).

Where wife, suing for divorce, had been absent from her former home in District of Columbia since 1923, in meantime she had been in China, Massachusetts, and New York, and had recently voted in New York and had continued to reside in New York City, but she testified that she had never abandoned her domicile in the District of Columbia, in deciding the issue of fact with regard to her intention, the court properly gave substantial weight to all of the facts. D.C. Code 1940, § 16-401. *Metcalf v. Metcalf*, 142 F.2d 102, 1944 U.S. App. LEXIS 3267 (1944).

In wife's action for divorce where proof showed that parties were married in the District of Columbia in October, 1939, and had obtained license upon representation that both resided there, and husband had lived in the District continuously since 1935, and testified that he meant to remain in District so long as he could work and make a living, and there was no evidence that husband had a fixed and definite intent to return to state of his former residence, proof showed that plaintiff was a "bona fide resident" of the District for the year preceding the filing suit for divorce. D.C. Code



1940, § 16-401. *Rogers v. Rogers*, 130 F.2d 905, 1942 U.S. App. LEXIS 3241 (1942).

Where evidence showed that plaintiff within a month before filing of her bill for divorce on September 10, 1935 in District of Columbia registered as a legal voter in the State of New York, bill for divorce for desertion in New York would be dismissed because of lack of satisfactory proof that plaintiff had been a bona fide resident of the district for at least two years before the application therefor. D.C. Code 1940, § 16-401. *Moritz v. Moritz*, 80 F.Supp. 267, 1936 U.S. Dist. LEXIS 2187 (D.C.Sup. 1936).

Trial court's finding that wife was bona fide resident of District of Columbia for at least six months, as required to maintain an action for divorce, was not clearly erroneous, despite facially incongruent statement in order that husband and wife had moved with children to Sudan with intent to remain there permanently; wife testified that she had been reluctant to move to Sudan and only moved there out of duty to follow her husband, and that her concerns were validated when she arrived in Sudan and immediately returned to her home in District of Columbia, parties' furniture and belongings had remained in their home in District of Columbia, parties maintained checking account in District of Columbia, and husband testified that he took family to Sudan as "trip" or "trial period" to explore possible business opportunity. *Abulqasim v. Mahmoud*, 2012 WL 3242986 (2012).

Evidence supported finding that plaintiff wife had been resident of District of Columbia for requisite period of time when she filed complaint for divorce. D.C. Code § 16-902. *Williams v. Williams*, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).

Notwithstanding wife's claim that it was impossible for husband, who, along with wife, was born and reared in Poland, to form an intent to be domiciled in the District of Columbia because he was in the United States under cultural-scientific exchange program and could not remain for an indefinite future time, and even though husband's intent might be described as a floating intent or even contingent upon being allowed to stay in the United States, under facts, husband met District of Columbia bona fide residency requirement for maintaining a divorce action. D.C. Code § 16-902. *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

Trial court's finding in husband's divorce action that husband intended to and did take up residence in the District of Columbia was supported by substantial evidence. D.C. Code § 16-904(a). *Seabrook v. Seabrook*, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

Under evidence that British citizen had severed all ties with Great Britain other than maintaining British citizenship, had renewed

his visa several times previous to institution of divorce action, was employed and lived within District of Columbia and intended to remain there indefinitely, British citizen was a bona fide resident of the District of Columbia for purposes of divorce action even though he had not applied for permanent residence in the United States and had entered United States on a nonimmigrant visa. D.C. Code § 16-902; Immigration and Nationality Act, §§ 101 et seq., 101(a)(3), (15)(G)(iv), 245, 8 U.S.C. §§ 1101 et seq., 1101(a)(3), (15)(G)(iv), 1255; 42 U.S.C. § 1981. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

Where parties were married in Virginia on June 27, 1953, in October, 1956 while they were living in West Virginia they separated, wife remained there until November 1, 1956 when she came to District of Columbia having obtained employment there, she had been working and living there continuously ever since and paid taxes in the District as her home, wife was resident of District for more than two years prior to filing of her suit for divorce on grounds of desertion notwithstanding that for a while wife was willing to resume marital relations with husband out of District if and when he provided a satisfactory home for her, which he never did, since the law did not require that wife when she moved to District intended to remain in District permanently. D.C. Code 1951, § 16-401. *Heater v. Heater*, 155 A.2d 523, 1959 D.C. App. LEXIS 376 (Cr.App. 1959).

In divorce suit by wife who lived in District of Columbia at time of her marriage and for a year thereafter when she moved to Arlington, Virginia, where she lived for nearly two years prior to bringing suit against husband who was in armed services and who had remained in District only a few days after the marriage, evidence sustained trial court's finding of fact that wife was not bona fide resident of District for one year preceding filing of her complaint as required by statute. D.C. Code 1951, § 16-401. *Adams v. Adams*, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).

In action by husband for divorce on ground of wife's desertion in Virginia where husband had formerly lived with wife, testimony of husband, who had moved to District of Columbia more than two years prior to commencement of action, that husband did not intend to make his home permanently in District because his employer was transferring him back to Virginia in near future did not, by itself, deprive trial court of jurisdiction and trial court erred in dismissing complaint for lack of jurisdiction. D.C. Code 1951, § 16-401. *Adams v. Adams*, 136 A.2d 866, 1957 D.C. App. LEXIS 322 (Cr.App. 1957).

In divorce action instituted by wife of North Carolina serviceman one year after she and her husband began living in Washington, D.C., but only a month and a half after date of their

separation, evidence sustained finding that there was no intent on part of husband to abandon his former domicile and establish one in Washington, and therefore court did not

have jurisdiction of suit. D.C. Code 1951, § 16-401. *Stephenson v. Stephenson*, 134 A.2d 105, 1957 D.C. App. LEXIS 257 (Cr.App. 1957).

### § 16-903. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds specified by sections 46-401.01 and 46-403 as invalidating a marriage.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 560; Mar. 3, 2010, D.C. Law 18-110, § 4, 57 DCR 27.)

**Cross references.** — Voidable marriages, grounds, see § 46-402.

**Prior Codifications.** — 1981 Ed., § 16-903. 1973 Ed., § 16-903.

**Effect of amendments.** — D.C. Law 18-110 substituted “46-401.01” for “46-401”.

**Legislative history of Law 18-110.** — Law 18-110, the “Religious Freedom and Civil Marriage Equality Amendment Act of 2009”, was introduced in Council and assigned Bill No.

18-482, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-248 and transmitted to both Houses of Congress for its review. D.C. Law 18-110 became effective on March 3, 2010.

### § 16-904. Grounds for divorce, legal separation, and annulment.

(a) A divorce from the bonds of marriage may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation for a period of six months next preceding the commencement of the action;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(b) A legal separation from bed and board may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation; or

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(3) Repealed.

(4) Repealed.

(c) For purposes of subsections (1) and (2) of paragraphs (a) and (b) of this section, parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though:

(1) they reside under the same roof; or

(2) the separation is pursuant to an order of a court.

(d) Marriage contracts may be annulled in the following cases:

(1) where such marriage was contracted while either of the parties



thereto had a former spouse living, unless the former marriage had been lawfully dissolved;

(2) where such marriage was contracted during the insanity of either party (unless there has been voluntary cohabitation after the discovery of the insanity);

(3) where such marriage was procured by fraud or coercion;

(4) where either party was matrimonially incapacitated at the time of marriage without the knowledge of the other and has continued to be so incapacitated; or

(5) where either of the parties had not attained the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after attaining the age of legal consent), but in such cases only at the suit of the party who had not attained such age.

(Dec. 23, 1963, 77 Stat. 560, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 2; Apr. 7, 1977, D.C. Law 1-107, title I, § 102, 23 DCR 8737; Mar. 24, 1998, D.C. Law 12-81, § 10(f), 45 DCR 745; Oct. 19, 2002, D.C. Law 14-207, § 2(b), 49 DCR 7827; Sept. 12, 2008, D.C. Law 17-231, § 20(a), 55 DCR 6758.)

**Cross references.** — Nonresident and absent defendants, service of process by publication, see § 13-336.

**Prior Codifications.** — 1981 Ed., § 16-904. 1973 Ed., § 16-904.

**Effect of amendments.** — D.C. Law 14-207, in subsec. (b), made nonsubstantive changes in pars. (1) and (2), and repealed pars. (3) and (4).

D.C. Law 17-231, in subsec. (d)(1), substituted “spouse” for “wife or husband”.

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 14-207.** — Law 14-207, the “Domestic Relations Laws Clarifications Act of 2002,” was introduced in Council and assigned Bill No. 14-635, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-441 and transmitted to both Houses of Congress for its review. D.C. Law 14-207 became effective on October 19, 2002.

**Legislative history of Law 17-231.** — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

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### Admissibility of evidence.

In divorce proceeding at which child's paternity was not at issue, evidence of wife's failure to take a human leukocyte antigen blood test to determine paternity was irrelevant. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Wife's negative answer to question whether she was agreeable to reconciliation with husband on form entitled "Motion and Affidavit" which she filed in action for separate maintenance was judicial admission and should have been admitted into evidence in husband's action for annulment or divorce to show that separation was voluntary. D.C. Code § 16-904(a). *Smith v. Smith*, 256 A.2d 833, 1969 D.C. App. LEXIS 307 (App. 1969).

### Adultery.

#### — Confession of adultery.

In divorce case, confessions of adultery must be well established, direct, certain, free from suspicion of collusion, and corroborated by independent facts and circumstances. U.S. Const. Amend. 5; D.C. Code §§ 16-901 et seq., 16-904(a). *Moore v. Moore*, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

Adultery must be proved by clear and convincing evidence, and confession thereof must be well established, direct, certain, free from

suspicion of collusion, and corroborated by independent facts and circumstances. D.C. Code 1961, § 16-904(a)(1). *Hagans v. Hagans*, 215 A.2d 842, 1966 D.C. App. LEXIS 131 (App. 1966).

#### — Due process, adultery.

Where interests of mother in divorce proceeding brought against her by her husband on grounds of adultery did not conflict with those of her minor child, and where interests of child were fully and ably protected by mother, failure to appoint guardian ad litem for child whose legitimacy was at issue did not deny child due process of law. D.C. Code SCR, Dom.Rel. Rules 17(c, e), 35; D.C. Code § 16-909. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Ordering of blood-grouping tests of child to be performed by reputable medical laboratory following accepted medical procedures in divorce proceeding to prove adultery of child's mother did not violate child's constitutional right to privacy. D.C. Code § 16-2343; D.C. Code SCR, Dom.Rel.Rule 35. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

#### — Evidence, adultery.

Proof of nonpaternity may, in appropriate cases, be circumstantial evidence of adultery as grounds for divorce. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Circumstantial evidence can be used to prove adultery. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

In divorce action, evidence that husband was incapable of procreation in 1968 and wife's admission that her son had been fathered by someone other than her husband were more than sufficient to support trial court's finding of adultery, and it was not necessary for husband to disprove every alternative explanation of the child's conception. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

Even if trial court's amendment of pleadings in divorce action based on desertion, sua sponte, on ground that proof established that husband was entitled to divorce for wife's adultery was permissible under amendment rule, evidence was insufficient to sustain finding of adultery. General Sessions Court Rules, pt. 1, § 1, rule 15(b); D.C. Code 1961, § 16-904(a) (1, 2). *Hagans v. Hagans*, 215 A.2d 842, 1966 D.C. App. LEXIS 131 (App. 1966).

#### — In general.

"Adultery" is voluntary sexual intercourse by a married person with someone other than his



or her spouse and must be proved by clear and convincing evidence; mere circumstances of suspicion are insufficient. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

#### — Jurisdiction, adultery.

The federal District Court for District of Columbia had jurisdiction of husband's action for divorce on ground of adultery committed by wife outside District, though plaintiff did not allege his residence therein for two years, where wife's acts of adultery were alleged to have been committed within period of over a year for which complaint alleged that plaintiff was a resident of District. D.C. Code 1951, § 16-401. *Orlans v. Orlans*, 238 F.2d 31, 1956 U.S. App. LEXIS 3981 (C.A.D.C. 1956).

#### Attorney fees.

Former wife's attorney fee award in the amount of \$6,241.18, upon entry of judgment by confession for former husband's failure to make payments under parties' post-dissolution settlement of contempt complaint for his failure to make payments required by prior judgment for breach of separation agreement, was reasonable; amount was supported by an affidavit from wife's attorney, which reflected that she had spent 17.8 hours over a six-month period "in regard to collecting the money owed to [wife] from [husband]," which worked out to an average of a little over an hour per month, and, given the amount involved, the complexity of the issues, and the actual time reasonably required to obtain judgment, award was reasonable. *Hackney v. Chamblee*, 980 A.2d 427, 2009 D.C. App. LEXIS 368 (2009).

Proper factors for trial court to weigh in determining amount of attorney fees to award in divorce proceeding include quality of services rendered, skills of counsel, result of litigation, difficulty of case, ability to pay attorney fees, and respective earning capacities of parties. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Award of attorney fees in divorce proceeding should be based on actual services performed; fact that litigation may have been burdensome or oppressive to party requesting fees may properly be considered by court in deciding whether to grant request at all, but should not be considered in determining amount of award. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

In determining attorney fees to be awarded in divorce proceeding, to add to the calculus any factors such as motivation of either party in pursuing the litigation creates risk of turning award of attorney fees into punitive damages, which are beyond power of divorce court to

grant. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

In divorce proceeding, wife's request for attorney fees in prior appeal should have been presented to Court of Appeals, which would have been in best position to determine value of counsel's services on such appeal; trial court should ordinarily defer to Court of Appeals. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

In divorce proceeding, record, which was ambiguous as to weight given to husband's motivations when trial court awarded wife \$20,000 in attorney fees, did not establish that trial court abused its discretion, but would require new hearing at which trial court would consider attorney fees de novo without considering motivations of parties. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Wife's counsel was entitled to an award of \$150 for services performed on appeal from judgment denying wife a limited divorce and separate maintenance. *Hannon v. Hannon*, 220 A.2d 94, 1966 D.C. App. LEXIS 184 (App. 1966).

Award of counsel fees of \$350 to wife's attorney in divorce action, with opportunity given husband to pay the fee within 120 days, was reasonable and supported by record. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Wife who brought proceeding to affirm marriage and set aside foreign divorce decree was entitled to counsel fees. D.C. Code 1961, §§ 16-401 to 16-422, 16-410, 16-415. *Gherardi De Parata v. Gherardi De Parata*, 193 A.2d 213, 1963 D.C. App. LEXIS 278 (App. 1963).

Wife's proceeding to affirm marriage and set aside foreign divorce decree was equitable in nature and District of Columbia Court of General Sessions had power to award counsel fees to wife. D.C. Code 1961, §§ 16-401 to 16-422, 16-410, 16-415. *Gherardi De Parata v. Gherardi De Parata*, 193 A.2d 213, 1963 D.C. App. LEXIS 278 (App. 1963).

#### Burden of proof, generally.

Nonindigent applicants for divorce are not required to prove in their divorce action in addition to statutory grounds that some useful social reason will be served by severance of marital relationship. D.C. Code § 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

#### Compulsory counterclaims.

Compulsory counterclaim rule applies in divorce actions. D.C. Code SCR, Civil Rule 13(a); D.C. Code SCR, Dom.Rel. Rule 13(a). *Stolar v. Stolar*, 359 A.2d 597, 1976 D.C. App. LEXIS 310 (1976).

That compulsory counterclaim rule is operative in divorce actions does not force a spouse to assert any existing compulsory counterclaim when sued for divorce but deals solely with procedural manner in which that claim is to be asserted, if at all. D.C. Code SCR, Dom.Rel. Rules 1, 13(a). *Stolar v. Stolar*, 359 A.2d 597, 1976 D.C. App. LEXIS 310 (1976).

Where gravamen of husband's unsuccessful divorce action was an alleged voluntary separation which commenced in October, 1973, and where wife's subsequent divorce action was based on an alleged desertion occurring in October, 1973, claims of husband and wife arose out of the same transaction and, therefore, wife's claim for divorce on ground of desertion constituted the subject matter of a compulsory counterclaim which was waived when the wife did not assert the claim in the prior action brought by husband. D.C. Code SCR, Civil Rule 13(a); D.C. Code SCR, Dom.Rel. Rule 13(a). *Stolar v. Stolar*, 359 A.2d 597, 1976 D.C. App. LEXIS 310 (1976).

Where husband clearly manifested his intention to sever marriage bond by filing action for divorce approximately 14 months after he moved out of the parties' home, wife had claim for desertion at the time she served her responsive pleading in her husband's divorce action and was, therefore, required by the compulsory counterclaim rule to assert her claim in the husband's action, despite wife's contention that, at the time her pleading was served, she was not aware of husband's intention never to resume marital relationship. D.C. Code SCR, Civil Rule 13(a); D.C. Code SCR, Dom.Rel. Rule 13(a). *Stolar v. Stolar*, 359 A.2d 597, 1976 D.C. App. LEXIS 310 (1976).

#### **Condonation.**

Wife is not required to leave common abode immediately on commission of an act of physical abuse to avoid an inference of condonation. *Ramos v. Ramos*, 291 A.2d 198, 1972 D.C. App. LEXIS 377 (1972).

That elderly wife, who was not sophisticated in law and held old-fashioned views regarding divorce, and who had lived for many years in house she had bought with help of her former husband, did not leave the house until two weeks after an act of physical abuse by her husband but on same day she first consulted counsel did not constitute condonation. *Ramos v. Ramos*, 291 A.2d 198, 1972 D.C. App. LEXIS 377 (1972).

#### **Continuance.**

Record failed to establish that denial of a three-month continuance request in divorce action was an abuse of discretion on asserted ground that wife had been denied opportunity to undertake discovery, since husband's responses to wife's interrogatories had been re-

ceived and it was wife who cancelled deposition sessions with husband. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

#### **Cruelty.**

Wife's departure from marital residence was not without justification, so as to preclude award of spousal support, where husband had engaged in a mosaic of conduct and words which were tantamount to emotional abuse, cruelty, and intimidation. D.C. Code 1981, §§ 16-904, 16-916(a). *Atkinson v. Atkinson*, 730 A.2d 667, 1999 D.C. App. LEXIS 128 (1999).

In view of fact that wife was 69 years old and that in her former marriage of 40 years' duration she had no occasion to become accustomed to financial deprivations and rough treatment inflicted upon her by new husband, one blow on arm and a course of conduct which caused wife to lose six pounds constituted sufficient bodily injury to support a limited divorce for cruelty. *Ramos v. Ramos*, 291 A.2d 198, 1972 D.C. App. LEXIS 377 (1972).

A single assault, or two isolated assaults, by one spouse upon the other does not necessarily constitute sufficient cruelty to justify injured spouse in leaving marital abode. *Hannon v. Hannon*, 220 A.2d 94, 1966 D.C. App. LEXIS 184 (App. 1966).

A single assault by wife, striking husband with a glass, was not sufficient cruelty to warrant divorce in absence of showing that husband's health was impaired, or that husband had to consult a doctor or had reasonable apprehension of serious future danger, especially where attack was not wholly unprovoked. D.C. Code 1961, § 16-904. *Chapple v. Chapple*, 204 A.2d 815, 1964 D.C. App. LEXIS 165 (App. 1964).

Generally, proof of a single assault will not necessarily constitute sufficient cruelty to sever bonds of matrimony, but a single act of violence may be so severe and atrocious under particular circumstances as to satisfy the statute. D.C. Code 1961, § 16-904. *Chapple v. Chapple*, 204 A.2d 815, 1964 D.C. App. LEXIS 165 (App. 1964).

#### **Death of spouse.**

Marriage, which is merely voidable, cannot be attacked after death of either spouse. *Nunley v. Nunley*, 210 A.2d 12, 1965 D.C. App. LEXIS 192 (App. 1965).

Where second wife sued husband for legal separation from bed and board on ground of alleged cruelty, and he counterclaimed for annulment on ground that marriage was void ab initio, and after trial, but while case was still under advisement by trial judge, husband died, husband's minor children by first marriage



lacked standing as "proper parties" to press annulment claim to its conclusion. D.C. Code 1961, § 11-904(a), (b)(1). *Nunley v. Nunley*, 210 A.2d 12, 1965 D.C. App. LEXIS 192 (App. 1965).

#### **Delay.**

Circumstances concerning dilatoriness required conclusion that dismissal of wife's counterclaim in divorce action was not an abuse of discretion. D.C. Code SCR, Civil Rule 41(b, c). *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

#### **Desertion.**

##### **— Alimony, desertion.**

Alimony is not intended as a penalty to be imposed upon husband nor as compensation to solace wife for wrongful abandonment by her husband, and her financial situation is a relevant consideration which may limit or even defeat an award. D.C. Code 1961, § 16-912. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Denial of alimony to wife who had intentionally abandoned husband and marital home without justification and had made only minimal contribution of accumulation of property of husband entitled to divorce on ground of desertion was not abuse of discretion. D.C. Code 1961, §§ 16-904, 16-913. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

##### **— Constructive desertion.**

Failure to establish constructive desertion entitles opposing spouse to divorce on grounds of unwarranted desertion, provided that guilty party remained away for statutory two-year period. D.C. Code 1961, § 16-904(a)(2). *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Wife seeking absolute divorce on ground of constructive desertion must prove open and notorious adultery by husband by clear and convincing evidence. U.S. Const. Amend. 5; D.C. Code §§ 16-901 et seq., 16-904(a). *Moore v. Moore*, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

Admission by husband that he had sexual relations with one woman was not "clear and convincing evidence" of "open and notorious adultery" such as would warrant absolute divorce on basis of constructive desertion. D.C. Code §§ 16-902, 16-904(a)(2). *Moore v. Moore*, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979),

writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

To prove constructive desertion as ground for divorce or legal separation, one spouse must show misconduct by other spouse forcing former to abandon marital abode and acts justifying abandonment must be such as would support decree for divorce. D.C. Code § 16-904(a)(2). *Moore v. Moore*, 398 A.2d 32, 1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

Constructive desertion is doctrine fashioned by courts to provide relief for party who justifiably separates from his or her spouse. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

Under doctrine of constructive desertion, conduct which justified separation is labeled as desertion, thus enabling innocent party to sue for divorce. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

Essential elements of constructive desertion are that one spouse bring about a separation from other spouse because of latter's misconduct which consists of, inter alia, cruelty arising from physical abuse or other acts which affect and impair health and make life together intolerable. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

Even though wife brought about a separation for at least one year by voluntarily filing charges against her husband for assault, where wife's action was occasioned by husband's misconduct, wife was entitled to divorce on ground of constructive desertion. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

Separation involuntarily imposed upon husband and wife will not support charge of constructive desertion, aggrieved party must lawfully bring about separation by some voluntary acts occasioned by other's misconduct. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

In light of fact that parties had lived apart for more than one year, a prima facie case had been made for absolute divorce on ground of constructive desertion for one year. *Ramos v. Ramos*, 291 A.2d 198, 1972 D.C. App. LEXIS 377 (1972).

Husband who found doors to his home secured against his entry and thereafter failed to make any effort to reconcile with his wife despite her overtures to him was not entitled to divorce on ground of constructive desertion. D.C. Code 1961, § 16-904(a)(2). *Hales v. Hales*, 207 A.2d 657, 1965 D.C. App. LEXIS 163 (App. 1965).

For "constructive desertion" as ground for divorce, spouse must show misconduct by the other spouse forcing the former to abandon the marital abode. D.C. Code 1961, § 16-904(a)(2). *Hales v. Hales*, 207 A.2d 657, 1965 D.C. App. LEXIS 163 (App. 1965).

#### — Defenses, desertion.

Justification for leaving a spouse is a traditional defense to charge of desertion for purposes of divorce action. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

#### — Evidence, desertion.

Evidence in husband's divorce action supported finding that wife had deserted without just cause. D.C. Code 1961, § 16-904(a)(2). *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Evidence supported findings that husband's departure from marital abode was without justification and without wife's consent. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Evidence supported finding that wife sued for divorce on ground of desertion had left the marital abode wholly without cause. D.C. Code 1961, § 16-904. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

#### — In general.

For purpose of determining whether claim for divorce on ground of "desertion" exists, "desertion" contemplates a voluntary separation of one party from the other without justification, an intention not to return and the absence of consent or connivance of the other party. *Stolar v. Stolar*, 359 A.2d 597, 1976 D.C. App. LEXIS 310 (1976).

Desertion for purposes of divorce action is defined as "a voluntary separation of one party from the other, without justification." D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

Departure from "marital abode" is not necessary for finding of desertion for purposes of divorce action. D.C. Code § 16-904(a). *Edwards v. Edwards*, 356 A.2d 633, 1976 D.C. App. LEXIS 531 (1976).

"Desertion" contemplates a voluntary separation of one party from the other, without justification, an intention not to return, and absence of consent or connivance of other party. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Both separation and desertion are continuing acts and right of action for divorce incident to them is not perfected until required period of time has elapsed. D.C. Code 1951, § 16-401.

*Oatley v. Oatley*, 161 A.2d 834, 1960 D.C. App. LEXIS 214 (Cr.App. 1960).

#### Divorce from bed and board.

A judgment of divorce from bed and board in the District of Columbia leaves the parties in the continuing status of husband and wife, with inherent possibility under statute that a further motion for absolute divorce will be made, and the action therefore remains open for further action as though it were an equity injunction. D.C. Code 1951, §§ 16-401, 16-403. *Bottomley v. Bottomley*, 262 F.2d 23, 1958 U.S. App. LEXIS 3386 (C.A.D.C. 1958).

#### Estoppel.

In determining whether to apply the bar of equitable estoppel in regard to a divorce proceeding, a court must consider all the factors of the case, such as the parties involved, the effect of the ultimate decision on third parties who were not before the court, the nature of rights sought to be vindicated and the public policy as expressed by pertinent statutes and prior judicial declarations. *Neuman v. Neuman*, 377 A.2d 393, 1977 D.C. App. LEXIS 369 (1977).

Wife, who failed to timely serve husband with motion for consideration of her petition to appeal in forma pauperis from divorce decree and failed to timely serve husband's counsel with copy of letter expressing wife's desire to proceed on appeal in paid status, was not estopped from challenging custody order but was estopped from challenging validity of divorce decree or property settlement, in view of fact that husband, who received order stating that application for appeal at public expense was deemed withdrawn, had reasonably believed that wife's appeal was at an end and had remarried in reliance on such belief. D.C. Code Court of Appeals Rules, rule 23(a); D.C. Code § 11-743. *Neuman v. Neuman*, 377 A.2d 393, 1977 D.C. App. LEXIS 369 (1977).

#### Felony convictions.

For purposes of statute authorizing divorce on conviction for felony and sentence to penal institution for not less than two years, maximum limits of sentence must be considered to determine length of sentence. D.C. Code 1961, § 16-904. *Courtney v. Courtney*, 214 A.2d 478, 1965 D.C. App. LEXIS 260 (App. 1965).

#### Foreign divorces.

Where wife's former marriage to another had been annulled by decree of chancery court of Mississippi wherein the other but not the wife was then domiciled, and wife was not served with process there or anywhere else except by publication and entered no appearance, regardless of whether the annulment was entitled to full faith and credit in District of Columbia, it was within power of district court to recognize it in wife's suit for limited divorce against



husband by subsequent marriage. D.C. Code 1940, § 16-401. *Shima v. Shima*, 130 F.2d 809, 1942 U.S. App. LEXIS 3202 (1942).

Mere consent of divorcing couple cannot create or confer jurisdiction upon courts of foreign country or sister state to grant divorce decree. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexican court. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained, and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Courts accord full faith and credit to decrees of divorce entered by courts of another nation, if such decrees are entered under circumstances such that they would be given full force and credit if entered in another state. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

### Hearsay.

Hearsay testimony of husband's witnesses as to wife's adultery was not corroborative of wife's admission in divorce action. D.C. Code 1961, § 16-904(a)(1). *Hagans v. Hagans*, 215 A.2d 842, 1966 D.C. App. LEXIS 131 (App. 1966).

### In general.

Since Congress has prescribed certain statutory grounds for divorce in District of Columbia it is beyond authority of any court to impose additional grounds thereto. D.C. Code § 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

In view of trial court's findings that parties had lived separate and apart without cohabitation for period of one year next preceding commencement of wife's divorce action brought in January, 1977 and that husband had been resident of District of Columbia for at least six months preceding commencement of the action, decree of divorce should be granted under the District of Columbia Marriage and Divorce Act of 1977 enacted in April, 1977. D.C. Code §§ 16-902, 16-904(a)(2). *Moore v. Moore*, 398 A.2d 32,

1979 D.C. App. LEXIS 342 (1979), writ of certiorari denied by 444 U.S. 838, 100 S. Ct. 74, 62 L. Ed. 2d 49, 1979 U.S. LEXIS 2696 (1979).

If marriage is void, fact of nullity may be shown directly or collaterally. *Nunley v. Nunley*, 210 A.2d 12, 1965 D.C. App. LEXIS 192 (App. 1965).

### Indigence.

Wife, who brought suit for divorce, was indigent, so as to be entitled to proceed under in forma pauperis statute, where she was mother of five children, and her total income was \$220 per month, recently increased to \$229 per month, from Department of Public Welfare. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Wife, who brought divorce suit, was indigent, so that she could proceed under in forma pauperis statute, where her take-home pay was \$70 per week, or about \$300 per month, and her living expenses were \$299, counting \$51 per month which she had to pay on debts totaling \$620. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

In forma pauperis statute should be construed to permit indigents to proceed in good faith with nonfrivolous claims for divorce. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Public policy of District of Columbia is not against divorce in divorce applications by indigent plaintiffs. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

In view of in forma pauperis statute, it is not proper to use inability of divorce applicant to pay costs of divorce action as ground for denying applicant access to fair trial. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

One of objectives in enacting in forma pauperis statute is to give rich and poor alike equal right to divorce. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

In forma pauperis statute does not exclude divorce actions. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

It is abuse of discretion for trial courts to use criteria in passing on in forma pauperis applications that in effect set up more restrictive divorce grounds than are prescribed by statute. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Obvious intent of in forma pauperis statute is to make available to indigent, in common with his fellow citizen, full range of civil remedies contrived by court or legislature, including what appeared to be meritorious cases for divorce. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

The public policy whether indigents should be able to maintain suit for divorce under in forma pauperis statute is for Congress and not judicial branch of government. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

### **Jurisdiction, generally.**

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. D.C. Code 1951, §§ 11-306, 16-401, 16-403. *Bottomley v. Bottomley*, 262 F.2d 23, 1958 U.S. App. LEXIS 3386 (C.A.D.C. 1958).

Where nonresident defendant to divorce proceeding, served by substitute service, counterclaimed for divorce, her voluntary action gave rise to personal jurisdiction of court. D.C. Code SCR, Dom.Rel. Rules 12(b), 13(a). *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

In cases involving internal affairs of family unit, court will not apply hard and fast rules of jurisdiction. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

As nonresident defendant in divorce proceeding, wife, upon substituted service, was not subject to in personam jurisdiction of court. D.C. Code SCR, Dom.Rel. Rules 12(b), 13(a). *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Availing oneself of jurisdiction of court by filing voluntary claim subjects claimant to personal jurisdiction. D.C. Code SCR, Dom.Rel. Rules 12(b), 13(a). *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Generally, only state where one of parties is domiciled has right to grant decree of divorce, but exception is that where adverse party to proceeding in stranger state enters appearance and has full opportunity to present jurisdictional issue to its courts before divorce is granted, final decree, if not subject to collateral attack in state where it is entered, is entitled to full faith and credit in any other state where its validity is assailed on jurisdictional grounds. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Where plaintiff husband met residency requirements to obtain divorce in District of Columbia and defendant wife submitted to jurisdiction of District of Columbia trial court, trial court was entitled to entertain and determine the divorce action. D.C. Code § 16-904(a). *Seabrook v. Seabrook*, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

### **Ne exeat.**

Writ of ne exeat had fulfilled its intended purpose of insuring superior court's continued in personam jurisdiction over husband during pendency of divorce action where, despite husband's absences from district, suit was completed routinely with entry of judgment in wife's favor. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Ordering return of bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, was not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of wife's equitable claims as embodied in money judgments. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Absent a proper finding of forfeiture for breach of terms of writ of ne exeat issued to secure defendant's appearance in divorce suit, funds supplied by third party for a bond as against such writ cannot be applied toward judgments obtained by plaintiff unless extraordinary circumstances are present. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

"Ne exeat" is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. D.C. Code § 49-



301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writs of ne exeat are to be employed only on most careful consideration of interests of all of the parties to the underlying action. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Scope and duration of restraints placed on defendant, via a writ of ne exeat, must not exceed those which are reasonably necessary to protection of plaintiff's equitable claims. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

If objective of a writ of ne exeat is to secure performance or satisfaction of plaintiff's equitable claims as well as defendant's appearance in court, the hostage funds may be applied to benefit of the aggrieved party in event of forfeiture. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writs of ne exeat serve merely to aid court in effective exercise of its equitable jurisdiction; as long as issuing court remains satisfied that restrained party is conducting himself in accordance with its directives, funds deposited as a guarantee of such behavior ordinarily would not be subject to being applied to satisfaction of money judgments obtained by plaintiff. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writ of ne exeat is ancillary to exercise of a court's equitable jurisdiction, and, as a general rule, will issue only for presently payable monetary claims of an equitable nature. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Party seeking issuance of a writ of ne exeat must make a proper showing of a threatened departure of defendant from the jurisdiction and a resulting defeat of court's power to give effective in personam relief due its loss of power over the defendant's person. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Courts of District of Columbia may issue writs of ne exeat in support of their jurisdiction over the various forms of marital actions. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Plaintiff bears burden of establishing necessity of both the initial issuance of a writ of ne exeat and its continued application. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Issuance, terms and implementation of writs of ne exeat lie within trial court's sound discretion. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

### Pleadings.

Where parties impliedly consented to try issue of divorce, and, in fact, did try it, trial court's error in granting husband a divorce when husband had not filed an amended complaint with a prayer for divorce would result only in remand of case to afford parties an opportunity to file appropriate motions regarding claim for divorce. *Williams v. Williams*, 495 A.2d 754, 1985 D.C. App. LEXIS 430 (1985).

Trial court's amendment of pleadings, sua sponte, in divorce action based on desertion on ground that proof adduced at trial established that husband was entitled to divorce for wife's adultery amounted to introduction after trial of new cause of action and was reversible error. General Sessions Court Rules, pt. 1, § 1, rule 15(b); D.C. Code 1961, § 16-904(a)(1, 2). *Hagans v. Hagans*, 215 A.2d 842, 1966 D.C. App. LEXIS 131 (App. 1966).

If an original complaint for divorce is filed prior to the expiration of the applicable time period under this section, plaintiff may file a supplemental complaint under Super. Ct. Dom. Rel. R. 15(d), and correct defects in the original complaint by setting forth facts occurring since the filing of the original. *Johnson v. Cuccias*, 120 WLR 737 (Super. Ct. 1992).

### Purpose.

Purpose of statute permitting divorce for five years' voluntary separation is to permit termination in law of marriages which have ceased to exist in fact. D.C. Code 1961, § 16-904(a)(3). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

### Questions of fact.

Question of cruelty is one of fact for trial court in divorce case. *Hannon v. Hannon*, 220 A.2d 94, 1966 D.C. App. LEXIS 184 (App. 1966).

Question of continuing voluntariness of separation, and question of good faith in tendering offer of reconciliation are generally questions of fact for trial judge. D.C. Code 1961, § 16-904(a)(3). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

In absence of proof of mutual consent to initial separation of husband and wife, issue of continuing voluntariness of separation for five-year period specified by statute as ground for divorce is generally question of fact for trial judge. D.C. Code 1961, § 16-904(a). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

### Reinstatement of action.

Where divorce action was dismissed on at least two occasions for failure to prosecute, but

causes were reinstated, effect of reinstatement was to restore action to its predismissal status; thus suit would be considered filed on date stamped on complaint by clerk of superior court. D.C. Code § 16-904; D.C. Code SCR Dom.Rel.Rule 41(f). *Williams v. Williams*, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).

### Res judicata.

Husband, against whom Virginia court had entered 1961 final decree dismissing husband's plea for annulment of marriage on theory that wife's New Mexico divorce from her former husband was invalid, was barred, under doctrine of res judicata, from relitigating validity of his marriage notwithstanding language of 1971 New Mexico opinion, which was entered in husband's suit attempting to have declared void wife's New Mexico divorce from her former husband and which stated that husband was barred from attacking the divorce, that wife had perhaps practiced fraud in obtaining divorce from her former husband. *Gullo v. Hirst*, 291 A.2d 504, 1972 D.C. App. LEXIS 401 (1972).

### Review.

Court reviewing judgment in divorce case was without authority to substitute its views for those of trial court where there was conflict in testimony surrounding factual issues. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

### Revocation of wills.

Doctrine of implied revocation of will applies there has been divorce and division of property by court. D.C. Code 1973, § 18-109. *Estate of Liles*, 435 A.2d 379, 1981 D.C. App. LEXIS 355 (1981).

Even though divorce was ultimately obtained through initiative of former wife, where divorce was granted on ground of voluntary separation for one year, implying former husband's voluntary disassociation from his former wife and that grant of divorce was not based solely upon former wife's actions, doctrine of implied revocation of will was not inapplicable on theory that there was no voluntary act by former husband from which inference of intent to revoke his previously executed will could be made. *Estate of Liles*, 435 A.2d 379, 1981 D.C. App. LEXIS 355 (1981).

Presumption of revocation of will in favor of former spouse that arises with divorce and property settlement is conclusive. *Estate of Liles*, 435 A.2d 379, 1981 D.C. App. LEXIS 355 (1981).

### Third parties.

When interests of an innocent third party are involved, great care should be taken to see that a former divorce decree is not lightly set aside.

*Neuman v. Neuman*, 377 A.2d 393, 1977 D.C. App. LEXIS 369 (1977).

### Voluntary separation.

#### — Burden of proof, voluntary separation.

One of the essential elements that must be established by party moving for a divorce based upon voluntary separation is that separation was voluntary for the statutory period. D.C. Code § 16-904. *Lee v. Lee*, 307 A.2d 757, 1973 D.C. App. LEXIS 326 (1973).

Wife who admitted that separation from husband had become voluntary had, as party challenging continuing voluntariness, burden of proving that she had changed her mind in husband's action for annulment or divorce. D.C. Code § 16-904(a). *Smith v. Smith*, 256 A.2d 833, 1969 D.C. App. LEXIS 307 (App. 1969).

Under statute providing for absolute divorce when husband and wife have been voluntarily separated from bed and board for five consecutive years without cohabitation, one essential element that party seeking divorce must establish is that separation was voluntary on part of both for statutory period. D.C. Code 1961, § 16-904(a). *Henderson v. Henderson*, 206 A.2d 267, 1965 D.C. App. LEXIS 138 (App. 1965).

If party seeking divorce on ground of voluntary separation for five consecutive years without cohabitation cannot prove that his spouse agreed to separation throughout five-year period or had silently acquiesced therein, he must establish that other spouse did not in good faith manifest desire to continue marriage, thus justifying conclusion that there had been acquiescence in fact to separation for critical period. D.C. Code 1961, § 16-904(a). *Henderson v. Henderson*, 206 A.2d 267, 1965 D.C. App. LEXIS 138 (App. 1965).

#### — Evidence, voluntary separation.

Evidence in husband's divorce action brought on ground of voluntary separation for one year was sufficient to warrant a finding of voluntary separation for the required period. D.C. Code § 16-904(a). *Archuleta v. Archuleta*, 345 A.2d 157, 1975 D.C. App. LEXIS 258 (1975), writ of certiorari denied by 425 U.S. 940, 96 S. Ct. 1677, 48 L. Ed. 2d 183, 1976 U.S. LEXIS 1387 (1976).

Wife's willingness to participate in Nevada divorce proceedings six months after initial separation was sufficient evidence of her intent to live separate and apart from her husband to satisfy statute permitting divorce on ground of one year's voluntary separation. D.C. Code § 16-904(a). *Jacobson v. Jacobson*, 277 A.2d 280, 1971 D.C. App. LEXIS 319 (1971).

Evidence sustained court's finding that separation was voluntary and entitled husband to a divorce. D.C. Code § 16-904(a). *McDaniel v. McDaniel*, 254 A.2d 407, 1969 D.C. App. LEXIS 268 (App. 1969).



Evidence in wife's divorce action, based on five years' voluntary separation, did not support finding that husband had made good faith offers of reconciliation. D.C. Code 1961, § 16-904(a)(3). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

Evidence supported finding that wife, who was sued by husband for divorce on ground of voluntary separation, had acquiesced in mutual voluntary separation for five consecutive years as required by statute. D.C. Code 1961, § 16-904(a). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

Evidence supported finding that separation between husband seeking divorce on ground of five years' voluntary separation and wife who claimed she did not leave the marital abode voluntarily and that she wrote husband a number of times expressing readiness and willingness to return but that the offers were ignored had not been voluntary. D.C. Code 1961, § 16-904(a)(3). *Glendening v. Glendening*, 206 A.2d 824, 1965 D.C. App. LEXIS 153 (App. 1965).

Although husband's words on witness stand tended to indicate a lack of "voluntariness" on his part, where his actions indicated otherwise, the court granted legal separation from bed and board under paragraph (b)(1). *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

#### — Findings, voluntary separation.

Where, at time of trial, person seeking divorce on ground of voluntary separation was required to prove such separation for one year prior to filing of complaint and court did not find that separation was voluntary at its inception, it became incumbent upon court to find when separation became voluntary and, in absence of such finding, there was no support for determination that jurisdictional prerequisite had been satisfied and proceeding must be remanded. D.C. Code §§ 16-902, 16-904, 16-917. *Williams v. Williams*, 378 A.2d 668, 1977 D.C. App. LEXIS 397 (1977).

Where there was no specific finding as to when the separation ripened into voluntary separation, granting wife's March 22, 1970 counterclaim for absolute divorce on ground of one-year voluntary separation after wife left family home on February 3, 1969, was error. D.C. Code § 16-904. *Bondurant v. Bondurant*, 283 A.2d 26, 1971 D.C. App. LEXIS 223 (1971).

#### — In general.

In actions for divorce on grounds of voluntary separation, the trial judge must decide from all the testimony whether the spouse who disputes that the separation was voluntary did in good faith manifest a real desire to continue the marriage status, "manifest" being defined as a plain or open desire to resume the marital relationship which must be directed to the

petitioning party. *Henderson v. Henderson*, App. D.C., 206 A.2d 267 (1965); *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

Fact that initial separation of parties was thought to be merely temporary and not in contemplation of separation or divorce did not prevent the separation of the parties from becoming a "separation" for purposes of divorce. D.C. Code § 16-904(a). *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

While alleged facts that husband had abandoned his family and committed adultery might form a persuasive basis for divorce if brought by wife either directly or by way of counterclaim, they did not have any legal effect upon suit for divorce brought by husband on theory of voluntary separation if in fact the "voluntariness" of the separation could be successfully shown. D.C. Code § 16-904(a). *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

Where parties' initial separation was mutually voluntary, there were no attempts at reconciliation, and separation period was devoid of cohabitation during statutory period of one year, husband was properly granted a divorce on ground of one year's voluntary separation even though parties had participated in Nevada divorce proceeding six months after initial separation. D.C. Code § 16-904(a). *Jacobson v. Jacobson*, 277 A.2d 280, 1971 D.C. App. LEXIS 319 (1971).

Where wife did not in good faith manifest real desire to continue marriage status and never made any effort to get in touch with her husband after separation, the separation was "voluntary" within statute making voluntary separation of the parties for one year a ground for divorce. D.C. Code § 16-904(a). *Seabrook v. Seabrook*, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

A wife who seeks to show that she wanted her marriage to continue and thus avoid divorce sought on ground of voluntary separation of the parties for one year cannot excuse her lack of action in attempting to reconcile on belief, on basis of rumors, that meretricious relationship existed between her husband and another woman. D.C. Code § 16-904(a). *Seabrook v. Seabrook*, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

Initial separation which constituted desertion by husband became voluntary on part of wife who filed motion for separate maintenance in which she stated in pleadings that she was not agreeable to reconciliation and husband who filed action for annulment or divorce more than one year after wife filed separate maintenance action should have been granted divorce when wife failed to show that separation had ceased to be voluntary. D.C. Code § 16-904(a).

Smith v. Smith, 256 A.2d 833, 1969 D.C. App. LEXIS 307 (App. 1969).

Nature of separation at its inception is not determinative of its continuing character, but is only evidence thereof, and if one spouse does not agree to separation at beginning, that spouse may thereafter affirmatively consent or silently acquiesce therein for required period. D.C. Code 1961, § 16-904(a). Henderson v. Henderson, 206 A.2d 267, 1965 D.C. App. LEXIS 138 (App. 1965).

In actions for divorce on ground of voluntary separation for five consecutive years without cohabitation, trial judge must decide from all testimony whether spouse who disputes that separation was voluntary did in good faith manifest real desire to continue marriage status, and such manifestation must be showing of desire to resume marital relationship which must be directed to petitioning party, and desires not reflected in conduct have little or no legal significance. D.C. Code 1961, § 16-904(a). Henderson v. Henderson, 206 A.2d 267, 1965 D.C. App. LEXIS 138 (App. 1965).

If either spouse does not continuously acquiesce in separation during five-year statutory period, statute authorizing absolute divorce on ground of voluntary separation does not authorize divorce. D.C. Code 1961, § 16-904(a). Henderson v. Henderson, 206 A.2d 267, 1965 D.C. App. LEXIS 138 (App. 1965).

— **Resumption of marriage, voluntary separation.**

Wife who asked husband to return home for

benefit of child but did not ask husband to return and resume marriage did not manifest a desire to resume marital relationship and thus did not exhibit the plain or open showing necessary to change characterization of their voluntary separation. D.C. Code § 16-904. Lee v. Lee, 307 A.2d 757, 1973 D.C. App. LEXIS 326 (1973).

One who entertains serious intention to resume a marriage must communicate that intention to the other spouse, even at the risk of his or her refusal. D.C. Code § 16-904(a). Seabrook v. Seabrook, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

**Weight and sufficiency of evidence, generally.**

Evidence in divorce action by wife supported finding that husband had not been separated from wife for one year. D.C. Code § 16-904. Robinson v. Robinson, 264 A.2d 305, 1970 D.C. App. LEXIS 270 (App. 1970).

Evidence sustained finding, in wife's action for limited divorce and for separate maintenance, that there was no substantial evidence of excessive drinking, that wife failed to prove the claimed threats, that, although husband had slapped wife on two occasions, she was not justified in leaving the marital domicile, and that husband adequately supported wife up to time she left him. Hannon v. Hannon, 220 A.2d 94, 1966 D.C. App. LEXIS 184 (App. 1966).

## § 16-905. Revocation and enlargement of decree of legal separation.

(a) The court may revoke its decree of legal separation at any time, upon the joint application of the parties to be discharged from the operation of the decree.

(b) The court may enlarge its decree of legal separation to an absolute divorce upon application of the party to whom the decree of legal separation was granted, a copy of which application shall be duly served upon the adverse party, if the court finds on the basis of affidavits that no reconciliation has taken place or is probable and that a separation has continued voluntarily and without interruption for a six-month period or without interruption for a period of one year.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 561; Apr. 7, 1977, D.C. Law 1-107, title I, § 103, 23 DCR 8737; Oct. 19, 2002, D.C. Law 14-207, § 2(c), 49 DCR 7827.)

**Prior Codifications.** — 1981 Ed., § 16-905. 1973 Ed., § 16-905.

**Effect of amendments.** — D.C. Law 14-207, in subsec. (a), substituted "legal separation" for "divorce from bed and board".

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.



## § 16-906. Causes for absolute divorce arising after decree for separation.

Where a legal separation has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to the second decree.

(Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; Oct. 19, 2002, D.C. Law 14-207, § 2(d), 49 DCR 7827.)

**Prior Codifications.** — 1981 Ed., § 16-906.  
1973 Ed., § 16-906.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Effect of amendments.** — D.C. Law 14-207 substituted “legal separation” for “divorce from bed and board”.

## § 16-907. Parent and child relationship defined.

(a) The term “legitimate” or “legitimated” means that the parent-child relationship exists for all rights, privileges, duties, and obligations under the laws of the District of Columbia.

(b) The term “born out of wedlock” solely describes the circumstances that a child has been born to parents who, at the time of its birth, were not married to each other. The term “born in wedlock” solely describes the circumstances that a child has been born to parents who, at the time of its birth, were married to each other.

(c) A child born to parents in a domestic partnership shall be treated for all legal purposes as a child born in wedlock. For the purposes of this subsection, the term “domestic partnership” shall have the same meaning as provided in § 32-701(4), but shall exclude a domestic partnership where a domestic partner is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 561; Apr. 7, 1977, D.C. Law 1-107, title I, § 104, 23 DCR 8737; July 18, 2008, D.C. Law 18-33, § 3(b), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-907.  
1973 Ed., § 16-907.

legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Effect of amendments.** — D.C. Law 18-33 added subsec. (c).

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Legislative history of Law 1-107.** — For

## § 16-908. Relationship not dependent on marriage or domestic partnership.

A child is the legitimate child of any parent under which a parent-child relationship is established pursuant to § 16-909, and is the legitimate relative of its parents’ relatives by blood or adoption and entitled to all rights, privileges, duties, and obligations under the laws of the District of Columbia.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 561; Apr. 7, 1977, D.C. Law 1-107,

title I, § 105, 23 DCR 8737; July 18, 2008, D.C. Law 18-33, § 3(c), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-908. 1973 Ed., § 16-908.

**Effect of amendments.** — D.C. Law 18-33 rewrote the section, which had read as follows: “A child born in wedlock or born out of wedlock is the legitimate child of its father and mother and is the legitimate relative of its father’s and mother’s relatives by blood or adoption.”

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

## CASE NOTES

### ANALYSIS

Equal protection.  
In general.

### Equal protection.

While children born out of wedlock do not constitute a “suspect class” that warrants strict judicial scrutiny, classifications that distinguish between legitimate and illegitimate children should be subjected to an intermediate

level of equal protection review. U.S.C. Const.Amends. 5, 14. District of Columbia ex rel. W.J.D. v. E.M., 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

### In general.

A child’s relationship to his mother is conclusively established by his birth to her. D.C. Code 1981, § 16-909(a). District of Columbia ex rel. W.J.D. v. E.M., 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

## § 16-909. Proof of child’s relationship to parents.

(a) A father-child relationship is established by an adjudication of a man’s parentage, by operation of subsection (e) of this section, or by an un rebutted presumption under this subsection. There shall be a presumption that a man is the father of a child:

(1) if he and the child’s mother are or have been married, or in a domestic partnership, at the time of either conception or birth, or between conception and birth, and the child is born during the marriage or domestic partnership, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court, or within 300 days after the termination of the domestic partnership pursuant to § 32-702(d); or

(2) if, prior to the child’s birth, he and the child’s mother have attempted to marry, and some form of marriage has been performed in apparent compliance with law, though such attempted marriage is or might be declared void for any reason, and the child is born during such attempted marriage, or within 300 days after the termination of such attempted marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(3) if, after the child’s birth, he and the child’s mother marry or attempt to marry, (with the attempt involving some form of marriage ceremony that has been performed in apparent compliance with law), though such attempted marriage is or might be declared void for any reason, and he has acknowledged the child to be his; or

(4) if the putative father has acknowledged paternity in writing.

(a-1)(1) A mother-child relationship is established by a woman having given birth to a child, by an adjudication of a woman’s parentage, by operation of



subsection (e) of this section, or by an un rebutted presumption under paragraph (2) of this subsection.

(2) There shall be a presumption that a woman is the mother of a child if she and the child's mother are or have been married, or in a domestic partnership, at the time of either conception or birth, or between conception or birth, and the child is born during the marriage or domestic partnership, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court, or within 300 days after the termination of the domestic partnership pursuant to § 32-702(d).

(b)(1) A presumption created by subsection (a)(1) through (4) of this section may be overcome upon proof by clear and convincing evidence, in a proceeding instituted within the time provided in § 16-2342(c) or (d), that the presumed parent is not the child's genetic parent. The Court shall try the question of parentage, and may determine that the presumed parent is the child's parent, notwithstanding evidence that the presumed parent is not the child's genetic parent, after giving due consideration to:

(A) Whether the conduct of the mother or the presumed parent should preclude that party from denying parentage;

(B) The child's interests; and

(C) The duration and stability of the relationship between the child, the presumed parent, and the genetic parent.

(2) If questioned, the presumption created by subsection (a-1)(2) that a child born to the mother is the child of the mother's female domestic partner may be overcome pursuant to paragraph (1) of this subsection or upon proof by clear and convincing evidence that the presumed parent did not hold herself out as a parent of the child.

(3) Notwithstanding any other provision in this title, when a child has both a presumed parent and a parent established by a voluntary acknowledgment of paternity, pursuant to § 16-909.01(a)(1), the Court shall determine parentage after giving due consideration to the child's interests and the duration and stability of the relationship between the child, the presumed parent, and the acknowledged parent.

(b-1) When a child has no presumed parent under subsection (a)(1) through (4) of this section or under subsection (a-1)(2) of this section, a conclusive presumption of parentage shall be created:

(1) Upon a result and an affidavit from a laboratory of a genetic test of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services that is performed by a laboratory approved by such a body indicating a 99% probability that the person is the genetic parent of the child; or

(2) If the father has acknowledged paternity in writing as provided in section 16-909.01(a)(1).

(c) The parent-child relationship shall be conclusively established:

(1) Upon a determination of the parentage of a child by the following:

(A) The Superior Court of the District of Columbia under the provisions of subchapter II of Chapter 23 of this title or subsection (b) of this section;

(B) Any other court of competent jurisdiction;

(C) The IV-D agency of another state, in compliance with jurisdictional and procedural requirements of that state; or

(D) Any entity of another state authorized to determine parentage, in compliance with jurisdictional and procedural requirements of that state;

(2) When a child has no presumed parent under subsection (a)(1) through (4) of this section or under subsection (a-1)(2) of this section, by a voluntary acknowledgment of paternity pursuant to section 16-909.01(a)(1), unless either signatory rescinds the acknowledgment pursuant to section 16-909.01(a-1); or

(3) By a voluntary acknowledgment of paternity in another state pursuant to the laws and procedures of that state, unless either signatory rescinds the acknowledgment pursuant to the laws and procedures of that state.

(c-1) A parent-child relationship that has been established pursuant to subsection (b-1)(1) of this section may be challenged upon the same grounds and through the same procedures as are applicable to a final judgment of the Superior Court. A parent-child relationship that has been established pursuant to subsection (b-1)(2) of this section or section 16-909.01(a)(1) may be challenged in the Superior Court after the rescission period provided by section 16-909.01(a-1) through the same procedures as are applicable to a final judgment of the Superior Court, but only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenging party. The legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment of parentage may not be suspended during the challenge, except for good cause shown.

(d) The parent-child relationship between an adoptive parent and a child may be established conclusively by proof of adoption.

(e)(1) A person who consents to the artificial insemination of a woman as provided in subparagraph (A) or (B) of this paragraph with the intent to be the parent of her child, is conclusively established as a parent of the resulting child.

(A) Consent by a woman, and a person who intends to be a parent of a child born to the woman by artificial insemination, shall be in writing signed by the woman and the intended parent.

(B) Failure of a person to sign a consent required by subparagraph (A) of this paragraph, before or after the birth of the child, shall not preclude a finding of intent to be a parent of the child if the woman and the person resided together in the same household with the child and openly held the child out as their own.

(2) A donor of semen to a person for artificial insemination, other than the donor's spouse or domestic partner, is not a parent of a child thereby conceived unless the donor and the person agree in writing that said donor shall be a parent. Notwithstanding any other provision in this title, genetic test results shall not establish parentage of a semen donor unless:

(A) The donor of semen is the spouse or domestic partner of the child's mother; or

(B) The donor and the child's mother agree in writing that said donor shall be a parent.



(f) For the purposes of this section, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3), but shall exclude a domestic partner who is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4), but shall exclude a domestic partnership where a domestic partner is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 561; Apr. 7, 1977, D.C. Law 1-107, title I, § 106, 23 DCR 8737; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(3), 33 DCR 6710; June 18, 1991, D.C. Law 9-5, § 2(c), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(c), 38 DCR 4970; Mar. 16, 1995, D.C. Law 10-223, § 2(b), 41 DCR 8051; Apr. 3, 2001, D.C. Law 13-269, § 106(c), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(d), 56 DCR 4269; Dec. 10, 2009, D.C. Law 18-88, § 402, 56 DCR 7413.)

**Prior Codifications.** — 1981 Ed., § 16-909. 1973 Ed., § 16-909.

**Effect of amendments.** — D.C. Law 13-269 rewrote subsec. (b-1)(1), which formerly read:

"(1) Upon a genetic test result and an affidavit from a laboratory, certified by the American Association of Blood Banks, indicating a 99% probability that the putative father is the father of the child; or"

rewrote subsec. (c) which formerly read:

"(c) Upon the entry of a final judgment determining the parentage of a child by the Superior Court under the provisions of section 16-2341 et seq., section 16-909(b) or by any other court of competent jurisdiction upon a genetic test result and affidavit as provided in subsection (b-1)(1) of this section, or if the father has acknowledged paternity as provided in section 16-909.01(a), the parent-child relationship is conclusively established. A parent-child relationship that has been established pursuant to subsection (b-1)(1) of this section or section 16-909.01(a)(1) may be challenged upon the same grounds and through the same procedures as are applicable to a final judgment of the Superior Court."

and added subsec. (c-1).

D.C. Law 18-33 rewrote the section.

D.C. Law 18-88 rewrote subsec. (a-1)(2); and, in subsec. (e)(2), inserted "A donor of semen to a person for artificial insemination, other than the donor's spouse or domestic partner, is not a parent of a child thereby conceived unless the donor and the person agree in writing that said donor shall be a parent." Prior to amendment, subsec. (a-1)(2) read as follows: "(2) For a child born to a mother in a domestic partnership, there shall be a presumption that the female domestic partner of the child's mother is a

parent of the child if the mother and the mother's domestic partner are or have been in a domestic partnership at the time of either conception or birth, or between conception and birth, and the child is born during the domestic partnership, or within 300 days after the termination of the domestic partnership pursuant to § 32-702(d)."

**Temporary Amendment of Section.** —

For temporary (225 day) amendment of section, see § 5(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(c) of the Child Support and Welfare Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(c) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(c) of the Child Support and Welfare Reform Compliance Second Emergency

Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(c) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(c) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(c) of Child Support and Welfare Reform Compliance Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 402 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 402 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 6-166.** — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 16-573.

**Legislative history of Law 9-5.** — For legislative history of D.C. Law 9-5, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 9-39.** — For legislative history of D.C. Law 9-39, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 10-223.** — Law 10-223, the "Paternity Establishment Act of 1994," was introduced in Council and assigned Bill No. 10-777, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-360 and transmitted to both Houses of Congress for its review. D.C. Law 10-223 became effective on March 16, 1995.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Legislative history of Law 18-88.** — For Law 18-88, see notes following § 16-801.

**Editor's notes.** — Mayor authorized to issue rules: See note to § 16-909.02.

## CASE NOTES

### ANALYSIS

Blood tests.  
Burden of proof.  
Contempt.  
Death of alleged father.  
Divorce proceedings.  
Estoppel.  
Genetic tests.  
In general.  
Jurisdiction.  
Notice.  
Pleadings.  
Presumption of paternity.  
Review.  
Sufficiency of evidence.  
Termination of parental rights.

### Blood tests.

The trial court did not abuse its discretion, in child support proceeding where paternity was at issue, by refusing to grant putative father's request for Human Leukocyte Antigen test on child; putative father had treated child as his own for six years, had made proffer of nonpaternity that amounted to no more than "mere suspicion," had been married to mother at time of birth, and had admitted sexual contact during period of conception. D.C. Code 1981, §§ 16-909(a)(1), 16-2343(a). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

Husband, who never requested that trial court in divorce proceeding impose sanctions on wife for her failure to take human leukocyte



antigen blood test to determine paternity of child, despite trial court's invitation to do so, waived such point. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Superior court had jurisdiction in action for absolute divorce on grounds of adultery to order mother, who was before court, to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery even though child was not party, not resident, not represented by guardian ad litem, and there was no request to court for support, maintenance, or custody. D.C. Code §§ 16-909, 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Where trial court made findings as to relevance of evidence that might be adduced from blood tests as going to issue of adultery in divorce action, there was no abuse of discretion in order that mother submit her child to blood-grouping tests. D.C. Code § 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Statute, providing that when it is relevant to action for divorce, court may direct that mother, child, and father submit to blood tests, gave superior court discretionary authority to order mother to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery. D.C. Code § 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Where not one single benefit would inure to child by ruling that human leukocyte antigen results should be admitted to defeat a claim for custody, the test results were not considered. *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993).

### **Burden of proof.**

Illegitimate child seeking to inherit from putative father must establish by a preponderance of the evidence that putative father was his father. D.C. Code 1981, § 16-909(a). In re *Estate of Glover*, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

### **Contempt.**

Where there was no final order or judgment respecting blood grouping tests because trial judge declared issue moot and discharged his order to show cause, party had never been "punished" for not submitting to the tests and, absent the imposition of a sanction, the contempt citation alone was not a final order and raised no justiciable issue for appeal in divorce action. D.C. Code § 11-721. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

### **Death of alleged father.**

Paternity claims brought following alleged father's death are subjected to close scrutiny,

particularly when no public and unambiguous acknowledgment of paternity was made during decedent's lifetime. *Murphy v. McCloud*, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

The provisions of this section apply to divorce, annulment, separation, support, etc., and not to inheritance, and they cannot overcome the requirement, for purposes of inheritance, that parenthood must have been established at the time of death of the putative father. In re *Estate of Glover*, 110 WLR 2809 (Super. Ct. 1982).

### **Divorce proceedings.**

In divorce action, evidence that husband was incapable of procreation in 1968 and wife's admission that her son had been fathered by someone other than her husband were more than sufficient to support trial court's finding of adultery, and it was not necessary for husband to disprove every alternative explanation of the child's conception. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

Statute providing that divorce for cause does not affect legitimacy of issue of marriage merely removes adjudication of status of child from divorce proceedings when subject matter of divorce action would call into question legitimacy and does not create mandatory duty for, or grant discretionary authority to, court to determine legitimacy so as to provide basis for subject matter jurisdiction. D.C. Code § 16-909. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Where interests of mother in divorce proceeding brought against her by her husband on grounds of adultery did not conflict with those of her minor child, and where interests of child were fully and ably protected by mother, failure to appoint guardian ad litem for child whose legitimacy was at issue did not deny child due process of law. D.C. Code SCR, Dom.Rel. Rules 17(c, e), 35; D.C. Code § 16-909. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Child, not party to divorce action, would not be bound by decision in such case that he was legitimate or illegitimate, and such decision must be carefully distinguished from decision on issue of legitimacy vel non for purposes other than proving adultery. D.C. Code § 16-909. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

### **Estoppel.**

Issue of whether mother and her children should be compelled to undergo particular blood testing in connection with putative father's denial of paternity had been actually litigated in earlier divorce proceeding and mo-

tion to vacate denial of that first motion, for purposes of determining whether father was collaterally estopped from seeking blood test in current proceeding. *Davis v. Davis*, 663 A.2d 499, 1995 D.C. App. LEXIS 153 (1995).

Putative father had full and fair opportunity to litigate issue of whether mother and children should be required to undergo blood testing in successive hearing in which father had opportunity to present witnesses and challenge contrary evidence so that father was collaterally estopped from relitigating paternity despite mother's alleged failure to disclose at earlier hearing her marriage to another man at the time of child's birth. *Davis v. Davis*, 663 A.2d 499, 1995 D.C. App. LEXIS 153 (1995).

Because issue of whether mother or children should be made to submit to blood testing to determine putative father's paternity was determined by judge in divorce action to be "primary concern," determination was essential to judgment for purposes of finding father collaterally estopped from relitigating issue of blood testing. *Davis v. Davis*, 663 A.2d 499, 1995 D.C. App. LEXIS 153 (1995).

Former husband was not equitably estopped to deny paternity of child born during marriage, even though his name was on birth certificate of child, where former wife falsely represented to husband that child was born from artificial insemination, rather than having been conceived through adulterous affair. D.C. Code 1981, §§ 16-909(a)(1), (b), 16-916(c). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

#### Genetic tests.

Certified result of deoxyribonucleic acid (DNA) test, conducted after alleged father's death, was admissible to determine paternity, for purposes of inheritance. In re *Estate of Douglas Allen Johnson*, 134 WLR 1703 (Super. Ct. 2006).

#### In general.

In an adoption proceeding, the putative father may be required to establish paternity before he can contest the adoption or require the court to consider his opinion as to the child's best interest. In re *T.M.*, 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

A child's relationship to his mother is conclusively established by his birth to her. D.C. Code 1981, § 16-909(a). *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

#### Jurisdiction.

Paternity determination for firefighter's putative child was outside special competence of Police and Firefighters' Retirement and Relief Board in connection with application for survivor benefits, and, thus, primary jurisdiction doctrine did not require court to defer exercising

jurisdiction in action for declaratory judgment on parentage; although the Board generally had the authority to make findings of fact, the governing statute did not specifically recognize or confer any specialized competency upon the Board regarding paternity, the competing facts the Board identified strongly suggested the possibility of fraud in acknowledgment of paternity, Board referred paternity question to court, and resolution of paternity by administrative body raised possibility of different determinations of parentage in different fora. *Matthews v. District of Columbia*, 875 A.2d 650, 2005 D.C. App. LEXIS 265 (2005).

The superior court has jurisdiction to adjudicate a nonsupport paternity action under its general equity jurisdiction. D.C. Code 1981, §§ 11-921, 11-1101 et seq., 16-2342; *District of Columbia Court Reform and Criminal Procedure Act of 1970*, § 101 et seq., 84 Stat. 473. In re *D.M.*, 562 A.2d 618, 1989 D.C. App. LEXIS 131 (1989).

#### Notice.

A putative father is entitled to notice of a pending adoption proceeding so that he may assert right to grasp his opportunity interest in claiming the obligations of parenthood. U.S.C. Const. Amend. 14. In re *T.M.*, 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

In a termination of parental rights (TPR) proceeding, there is no legal prohibition to the trial court's resolving the issue of paternity of a putative father who has been identified by the child's mother as the father or who claims that status, provided he has been afforded proper notice and an opportunity to be heard. D.C. Code 1981, §§ 16-2351 to 16-2365. In re *T.M.*, 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

#### Pleadings.

Mother seeking declaration of paternity failed to state a justiciable claim, as mother alleged no reason for seeking the determination of her adult daughter's parentage and, thus, mother's petition was properly dismissed. *Domestic Relations Rules* 57, 405(a, b); 18 U.S.C. § 2201 et seq. In re *D.M.*, 562 A.2d 618, 1989 D.C. App. LEXIS 131 (1989).

#### Presumption of paternity.

Statutory presumption that man is father of child born during marriage was rebutted by former wife's admission that she engaged in sexual relations outside marriage in order to conceive and that former husband was unable to father child, and thus, former husband had no duty imposed by law to support child. D.C. Code 1981, § 16-909(a)(1), (b). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

Blood grouping or Human Leukocyte Antigen test which excludes putative father as biologi-



cal father is sufficient to rebut statutory presumption that husband is father of child born during marriage and is conclusive evidence of nonpaternity. D.C. Code 1981, § 16-909(a)(1). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

Putative father's naked assertion of nonresemblance, in the absence of any proffer of striking or peculiar nonresemblance, could not properly be used to rebut statutory presumption of paternity arising from birth of child during marriage. D.C. Code 1981, § 16-909(a)(1). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

Although woman has burden of proving man's paternity by preponderance of the evidence, child's birth during marriage of woman and man raises rebuttable statutory presumption that husband is father. D.C. Code 1981, § 16-909(a)(1). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

A man is presumed to be a child's father if specified circumstances related to marriage or attempted marriage are present. D.C. Code 1981, § 16-909(a)(1-3). District of Columbia ex rel. W.J.D. v. E.M., 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

In determining whether decedent was father of child probate court correctly applied presumption of paternity based on marriage of decedent to child's mother. D.C. Code 1978 Supp. §§ 16-909, 16-909(b). In re Estate of Shorter, 444 A.2d 954, 1982 D.C. App. LEXIS 332 (1982).

Statutory presumption that man is father of child born during marriage does not apply to pre-trial question of whether to order paternity testing; there is not statutory requirement that a man challenging paternity must essentially come forward with all of his trial proof of non-test evidence to obtain pre-trial testing. D.C. v. Davis, 135 WLR 1141 (Super. Ct. 2007).

There is no need to address the effect of a "conclusive presumption" in an evidentiary or trial context, inasmuch as the acknowledgment form recognized by this section—more so than a mere acknowledgment of paternity—is, in effect, a waiver of any trial rights *ab initio*. If there is no longer any right to a trial, the court need not reach the issue of what evidentiary effect any presumption may have during that trial. Nor would any genetic tests be relevant to anything which is literally not before the court. T.B. v. J.R.W., 124 WLR 417 (Super. Ct. 1996).

## Review.

Order in ongoing probate case determining that petitioner was daughter of intestate decedent was final, appealable order, even though administration of decedent's estate continued. D.C. Code 1981, § 11-721(a)(1). Murphy v. McCloud, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

In divorce proceeding, husband's claim for declaratory judgment that he was not father of minor child should not have been dismissed with prejudice, since question of child's paternity was not litigated. Rachal v. Rachal, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

A statute restricting the available grounds on which a party, after the rescission period, may challenge an establishment of paternity by acknowledgement did not apply to bar putative father from challenging an adjudication of paternity under a domestic-relations rule allowing relief from a final judgment for "any other reason justifying relief," even though putative father wrote, "I consent," and signed his name to an adjudication of paternity form order; nothing in the record indicated that putative father was ever advised of his rights and responsibilities as a parent or of the alternatives to and consequences of acknowledging that he was the father, such that paternity was not established by acknowledgement. Bradford v. Rice, 136 WLR 2389 (Super. Ct. 2008).

Pretrial order that regulated litigation of paternity issue was not a final order that was subject to appeal; order did not dispose of entire case and did not leave trial judge with no other obligations than to enforce the order. D.C. v. Davis, 135 WLR 1141 (Super. Ct. 2007).

## Sufficiency of evidence.

Finding by probate court that plaintiff was daughter of intestate decedent and entitled to share in estate, rather than decedent's sister, was reversible error, even though flawed birth certificate supported plaintiff's claim; there was no evidence that decedent publicly acknowledged plaintiff as his daughter, plaintiff was raised as decedent's sister, and plaintiff failed to testify in support of claim or to defend against allegation that paternity claim was opportunistic fabrication. Murphy v. McCloud, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

Nothing in the record justified rejection of the trial court's credibility determination, in child support proceeding where paternity was at issue, that putative father's wife had not had adulterous one-night affair some time around period of conception. D.C. Code 1981, § 16-909(a)(1). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

Evidence supported finding of probate court that child of decedent's wife was child of decedent. D.C. Code 1978 Supp. §§ 16-909, 16-909(b). In re Estate of Shorter, 444 A.2d 954, 1982 D.C. App. LEXIS 332 (1982).

## Termination of parental rights.

Trial court in termination of parental rights (TPR) proceeding abused its discretion in failing to recognize that it had the alternative to terminate rights of two putative fathers, even

though paternity had not been established and neither man appeared at the hearing, where child's counsel represented that one of the men was personally served notice and where alternative service of the other by posting was granted after he could be located by search of appropriate records. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

It is essential to establish the relationship of father and son or daughter before terminating that relationship through a termination of parental rights (TPR) proceeding. D.C. Code 1981,

§§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in a termination of parental rights (TPR) proceeding has authority under TPR statute to resolve finally any claimed putative father's right to assert paternity in a subsequent proceeding provided he has been served properly with notice and has been afforded an opportunity to be heard on the issues. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

### **§ 16-909.01. Establishment of paternity by voluntary acknowledgment and based on genetic test results.**

(a) Paternity may be established by:

(1) A written statement of the father and mother signed under oath (which may include signature in the presence of a notary) that acknowledges paternity; provided, that before the parents sign the acknowledgment, both have been given written and oral notice of the alternatives to, legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment. (Oral notice may be given through videotape or audiotape.) The acknowledgment shall include the full name, the social security number, and date of birth of the mother, father, and child, the addresses of the mother and father, the birthplace of the child, an explanation of the legal consequences of the affidavit, a statement indicating that both parents understand their rights, responsibilities, and the alternatives and consequences of signing the affidavit, the place the affidavit was completed, signature lines for the parents, and any other data elements required by federal law. Nothing in this paragraph shall affect the validity of a voluntary acknowledgment of paternity executed before December 23, 1997, or preclude the submission of an acknowledgment of paternity that does not comply with the requirements of this paragraph as evidence of paternity in a judicial or administrative proceeding; or

(2) A result and an affidavit from a laboratory of a genetic test of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services that is performed by a laboratory approved by such a body, that affirms at least a 99% probability that the putative father is the father of the child.

(a-1) A signatory to a voluntary acknowledgment of paternity pursuant to subsection (a)(1) of this section may rescind the acknowledgment within the earlier of 60 days or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party.

(b) When a child has no presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2), an acknowledgment in accordance with subsection (a)(1) of this section, which has not been rescinded pursuant to subsection (a-1) of this section, or a genetic test and affidavit that meet the requirements of subsection (a)(2) of this section shall legally establish the parent-child relationship



between the father and the child for all rights, privileges, duties, and obligations under the laws of the District of Columbia. The acknowledgment or genetic test and affidavit shall be admissible as evidence of paternity.

(c) A public or private agency or institution that operates in the District of Columbia shall accept as adequate proof of paternity a birth certificate issued by the District of Columbia after the effective date of the District of Columbia Paternity Establishment Temporary Act of 1991 [June 18, 1991] or other evidence that the requirements of subsection (a)(1) or (a)(2) of this section have occurred.

(d) If a child has a presumed parent, in the absence of an acknowledgment, or if the probability of paternity shown by a genetic test is less than 99%, paternity may be established as otherwise provided in this chapter.

(June 18, 1991, D.C. Law 9-5, § 2(d), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(d), 38 DCR 4970; Mar. 16, 1995, D.C. Law 10-223, § 2(c), 41 DCR 8051; Apr. 18, 1996, D.C. Law 11-110, § 24(a), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 18(c), 44 DCR 1271; Apr. 3, 2001, D.C. Law 13-269, § 106(d), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(e), 56 DCR 4269.)

**Cross references.** — Tests to establish parentage, see § 16-2343.

**Prior Codifications.** — 1981 Ed., § 16-909.1.

**Effect of amendments.** — D.C. Law 13-269 rewrote subsec. (a) which formerly read: “(a) Paternity may be established by:”; added subsec. (a-1); in s struck “section 16-909.1(a)(1)” and inserted “subsection (a)(1) of this section, which has not been rescinded pursuant to subsection (a-1) of this section,” struck “section 16-909.1(a)(2)” and inserted “subsection (a)(2) of this section”; and, in subsec. (c), struck “section 16-909.1(a)(1) or (a)(2)” and inserted “subsection (a)(1) or (a)(2) of this section”.

D.C. Law 18-33, in subsec. (b), substituted “When a child has no presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2), an acknowledgment” for “An acknowledgment”; and, in subsec. (d), substituted “If a child has a presumed parent, in the absence” for “In the absence”.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section 16-909.1 1981 Ed., see § 5(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(d) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(d) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of

## § 16-909.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(d) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 9-5.** — Law 9-5 was, the “District of Columbia Paternity Establishment Temporary Act of 1991,” introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-39.** — Law 9-39, the “District of Columbia Paternity Establishment Act of 1991,” was introduced in Council and assigned Bill No. 9-2, which was re-

ferred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see Historical and Statutory Notes following § 16-909.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 1, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11-255.** — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor’s notes.** — Mayor authorized to issue rules: See note to § 16-909.02.

Section 28(b)(1) of D.C. Law 15-354 provided that the section designation of § 16-901.1 of the District of Columbia Official Code is redesignated as § 16-901.01.

### CASE NOTES

#### **In general.**

A statute restricting the available grounds on which a party, after the rescission period, may challenge an establishment of paternity by acknowledgement did not apply to bar putative father from challenging an adjudication of paternity under a domestic-relations rule allowing relief from a final judgment for “any other reason justifying relief,” even though putative father wrote, “I consent,” and signed his name to an adjudication of paternity form order; nothing in the record indicated that putative father was ever advised of his rights and re-

sponsibilities as a parent or of the alternatives to and consequences of acknowledging that he was the father, such that paternity was not established by acknowledgement. *Bradford v. Rice*, 136 WLR 2389 (Super. Ct. 2008).

Record supported a conclusion that an acknowledgement of paternity was not legally binding; both mother and signatory to the acknowledgement testified that they did not receive notice of any legal consequences associated with signing the acknowledgement. *Bradford v. Rice*, 136 WLR 2389 (Super. Ct. 2008).

## § 16-909.02. Full faith and credit to parentage determinations by other states.

The District of Columbia government shall give full faith and credit to the



determinations of parentage made by other states, whether established through voluntary acknowledgment or through an administrative or judicial process.

(Mar. 16, 1995, D.C. Law 10-223, § 2(d), 41 DCR 8051; July 18, 2008, D.C. Law 18-33, § 3(f), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-909.2.

**Effect of amendments.** — D.C. Law 18-33 substituted “parentage” for “paternity”.

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 102(b) of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Temporary Act of 1996 (D.C. Law 11-206, April 9, 1997, law notification 44 DCR 2401).

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see Historical and Statutory Notes following § 16-909.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor’s notes.** — Mayor authorized to issue rules: Section 3 of D.C. Law 10-223 provided that, pursuant to Subtitle I of Chapter 15 of Title 1, the Mayor may issue rules to implement the provisions of the act.

Section 28(b)(1) of D.C. Law 15-354 provided that the section designation of § 16-901.2 of the District of Columbia Official Code is redesignated as § 16-901.02.

## § 16-909.03. Voluntary paternity acknowledgment program for birthing hospitals.

(a) For the purposes of this section, the term “birthing hospital” means a hospital that has an obstetric care unit or provides obstetric services, or a birthing center.

(b)(1) Each public and private birthing hospital in the District of Columbia shall operate a program that, immediately before and after the birth of a child, provides to each unmarried woman who gives birth at the hospital and the alleged putative father, if present in the hospital:

(A) Written materials concerning paternity establishment;

(B) Forms necessary to acknowledge paternity voluntarily that meet the federal requirements;

(C) A written and oral description (the oral description may be videotaped or audiotaped) of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from, signing a voluntary acknowledgment of paternity;

(D) Written notice that a voluntary acknowledgment of paternity is not effectuated unless the mother and putative father each signs the form under oath and a notary authenticates the signatures;

(E) The opportunity to speak, either by telephone or in person, with hospital or IV-D agency staff who are trained to clarify information and answer questions about paternity establishment;

(F) Access to the services of a notary on the premises of the birthing hospital; and

(G) The opportunity to acknowledge paternity voluntarily in the hospital.

(2) The Mayor shall provide to each birthing hospital the materials described in paragraph (1)(A) through (D) of this subsection, in sufficient amounts to be distributed to each unmarried mother giving birth in the hospital and to each putative father present in the hospital.

(c) The birthing hospital shall transmit each completed voluntary acknowledgment of paternity form to the Registrar of Vital Records within 14 days of completion. The Registrar shall promptly record identifying information from the form and permit the IV-D agency timely access to the identifying information and any other documentation recorded from the form that the IV-D agency needs to determine if a voluntary acknowledgment of paternity has been recorded and to seek a support order on the basis of the recorded voluntary acknowledgment of paternity.

(d) The Mayor shall provide to the staff of each birthing hospital training, guidance, and written instructions necessary to operate the paternity acknowledgment program required by this section.

(e) The Mayor shall assess the program of each birthing hospital each year.

(Feb. 27, 1998, D.C. Law 12-54, § 2, 44 DCR 6231; Apr. 3, 2001, D.C. Law 13-269, § 106(e), 48 DCR 1270.)

**Prior Codifications.** — 1981 Ed., § 16-909.3.

**Effect of amendments.** — D.C. Law 13-269 rewrote this section.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

**Temporary Addition of Section.** — For temporary (225 day) addition of section and § 16-909.4 1981 Ed, see § 5(b) and (e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) addition of § 16-909.4 1981 Ed and § 16-909.5 1981 Ed, see § 5(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of § 16-909.4 1981 Ed and § 16-909.5 1981 Ed, see § 105(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

**Emergency legislation.** — For temporary addition of section, see § 2(b) of the Paternity Acknowledgment Congressional Review Emergency Act of 1996 (D.C. Act 11-423, October 28, 1996, 43 DCR 6136), § 2 (b) of the Paternity Acknowledgment Second Congressional Review Emergency Act of 1996 (D.C. Act 11-480, December 30, 1996, 44 DCR 212), § 2(b) of the Paternity Acknowledgment Congressional Review Emergency Act of 1997 (D.C. Act 12-20, March 3, 1997, 44 DCR 1765), § 2(b) of the Paternity Acknowledgment Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-181, October 30, 1997, 44 DCR 6953, repealed by D.C. Act 12-222, § 14(a)), and § 2(b) of the Paternity Acknowledgment Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-253, January 29, 1998, 45 DCR 903).

For temporary addition of section, see § 102 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

For temporary designation of title I of the act as the Paternity Acknowledgment Emergency Act of 1996, see § 101 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

Section 3 of D.C. Act 11-423, D.C. Act 11-480, and D.C. Act 12-20 provided that the enactment “will ensure that the District government remains eligible for approximately \$13 million in federal funds used in the collection of child support payments from noncustodial parents



for the care of children who reside in the District.”.

For temporary addition of section, see § 5(e) of the Child Support Welfare and Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(e) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary addition of § 16-909.4 1981 Ed., see § 5(f) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114) and § 5(f) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923).

For temporary repeal of § 16-909.03, see § 14(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary addition of § 16-909.4 1981 Ed. and 16-909.5 1981 Ed., see § 5(f) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(f) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(f) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 105(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary addition of § 16-909.4 1981 Ed. and 16-909.5 1981 Ed., see § 105(f) of the

Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606). For temporary (90-day) addition of §§ 16-909.4 1981 Ed. and 16-909.5 1981 Ed., see § 105(f) of the same Act.

For temporary (90-day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678). For temporary (90-day) addition of §§ 16-909.4 1981 Ed. and 16-909.5 1981 Ed., see § 105(f) of the same Act.

For temporary (90-day) amendment of section, see § 105(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581). For temporary (90-day) addition of §§ 16-909.4 1981 Ed. and 16-909.5 1981 Ed., see § 105(f) of the same Act.

For temporary (90 day) amendment of section, see § 105(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(e) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 12-54.** — Law 12-54, the “Paternity Acknowledgment Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-255, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-171 and transmitted to both Houses of Congress for its review. D.C. Law 12-54 became effective on February 27, 1998.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Editor’s notes.** — Section 28(b)(1) of D.C. Law 15-354 provided that the section designation of § 16-901.3 of the District of Columbia Official Code is redesignated as § 16-901.03.

**§ 16-909.04. Voluntary paternity acknowledgment program for birth records agency.**

(a) The Registrar of Vital Records shall offer to any person seeking to file or amend a birth certificate that does not include the names of 2 parents:

(1) Written materials concerning paternity establishment;

(2) Forms necessary to acknowledge paternity voluntarily that meet the federal requirements;

(3) A written and oral description of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from, signing a voluntary acknowledgment of paternity (the oral description may be videotaped or audiotaped);

(4) Written notice that a voluntary acknowledgment of paternity is not effectuated unless the mother and putative father each signs the form under oath and a notary authenticates the signatures;

(5) The services of a notary on the premises;

(6) The opportunity to speak, by telephone or in person, with staff of the IV-D agency or Registrar who are trained to clarify information and answer questions about paternity establishment; and

(7) The opportunity to acknowledge paternity voluntarily at the birth records agency.

(b) The Registrar of Vital Records shall establish procedures for the recording in the records of the Registrar, and for the transmittal to the IV-D agency of completed voluntary acknowledgments of paternity, and of information contained in an acknowledgment that may be used in the establishment or enforcement of a support order.

(Apr. 3, 2001, D.C. Law 13-269, § 106(f), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(g), 56 DCR 4269.)

**Effect of amendments.** — D.C. Law 18-33 substituted “the names of 2 parents” for “a father’s name”.

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 105(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary (90 day) addition of this section, see § 105(f) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 106(f) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor’s notes.** — Section 28(b)(1) of D.C. Law 15-354 provided that the section designation of § 16-901.4 of the District of Columbia Official Code is redesignated as § 16-901.04.

**§ 16-909.05. Mayor authorized to designate other sites for paternity acknowledgment program.**

The Mayor is authorized to establish voluntary paternity establishment services at entities other than hospitals, or the Vital Records Office, by publishing a notice of such location in the D.C. Register. The Mayor may only designate entities that meet the applicable federal requirements and comply



with the same requirements that apply to birthing hospitals as set forth in section 16-909.03.

(Apr. 3, 2001, D.C. Law 13-269, § 106(f), 48 DCR 1270.)

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 105(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary (90 day) addition of this section, see § 105(f) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 106(f) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Editor's notes.** — Section 28(b)(1) of D.C. Law 15-354 provided that the section designation of § 16-901.5 of the District of Columbia Official Code is redesignated as § 16-901.05.

## § 16-910. Assignment and equitable distribution of property.

Upon entry of a final decree of legal separation, annulment, or divorce, or upon the termination of a domestic partnership pursuant to § 32-702(d) and the filing of a petition for relief available under this section, in the absence of a valid antenuptial or postnuptial agreement resolving all issues related to the property of the parties, the court shall:

(a) assign to each party his or her sole and separate property acquired prior to the marriage or domestic partnership, and his or her sole and separate property acquired during the marriage or domestic partnership by gift, bequest, devise, or descent, and any increase thereof, or property acquired in exchange therefor; and

(b) value and distribute all other property and debt accumulated during the marriage or domestic partnership that has not been addressed in a valid antenuptial or postnuptial agreement or a decree of legal separation, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just, and reasonable, after considering all relevant factors, including, but not limited to:

- (1) the duration of the marriage or domestic partnership;
- (2) the age, health, occupation, amount, and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties;
- (3) provisions for the custody of minor children;
- (4) whether the distribution is in lieu of or in addition to alimony;
- (5) each party's obligation from a prior marriage, a prior domestic partnership, or for other children;
- (6) the opportunity of each party for future acquisition of assets and income;
- (7) each party's contribution as a homemaker or otherwise to the family unit;
- (8) each party's contribution to the education of the other party which enhanced the other party's earning ability;
- (9) each party's increase or decrease in income as a result of the marriage, the domestic partnership, or duties of homemaking and child care;

(10) each party's contribution to the acquisition, preservation, appreciation, dissipation, or depreciation in value of the assets which are subject to distribution, the taxability of these assets, and whether the asset was acquired or the debt incurred after separation;

(11) the effects of taxation on the value of the assets subject to distribution; and

(12) the circumstances which contributed to the estrangement of the parties.

(c) The Court is not required to value a pension or annuity if it enters an order distributing future periodic payments.

(Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; Apr. 7, 1977, D.C. Law 1-107, title I, § 107, 23 DCR 8737; Oct. 19, 2002, D.C. Law 14-207, § 2(e), 49 DCR 7827; Apr. 4, 2006, D.C. Law 16-79, § 4(d), 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 131(b), 53 DCR 6794; Sept. 12, 2008, D.C. Law 17-231, § 20(b), 55 DCR 6758.)

**Prior Codifications.** — 1981 Ed., § 16-910. 1973 Ed., § 16-910.

**Effect of amendments.** — D.C. Law 14-207, in the section heading, substituted "Assignment and equitable distribution of property." for "Dissolution of property rights; jurisdiction of court."; rewrote the introductory paragraph and subsec. (b); and added subsec. (c). The introductory paragraph and subsec. (b) had read, respectively, as follows: "Upon the entry of a final decree of annulment or divorce in the absence of a valid ante-nuptial or post-nuptial agreement or a decree of legal separation disposing the property of the spouses, the court shall:" "(b) distribute all other property accumulated during the marriage, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just and reasonable, after considering all relevant factors including, but not limited to: the duration of the marriage, any prior marriage of either party, the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties, provisions for the custody of minor children, whether the distribution is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of assets and income. The court shall also consider each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets subject to distribution under this subsection, and each party's contribution as a homemaker or to the family unit."

D.C. Law 16-79, in lead-in language, substituted "or divorce, or upon the termination of a domestic partnership pursuant to § 32-702 and the filing of a petition for relief under this section," for "or divorce,"; in subsec. (a), substituted "marriage or domestic partnership" for "marriage"; in the lead-in language of subsec. (b), substituted "marriage or domestic partnership" for "marriage"; in par. (b)(1), substituted "marriage or domestic partnership;" for "marriage"; in par. (b)(5), substituted "marriage, a prior domestic partnership," for "marriage"; and in par. (b)(9), substituted "marriage, the domestic partnership," for "marriage".

D.C. Law 16-191, in the introductory language, inserted "available" following "relief".

D.C. Law 17-231, in the lead-in language, substituted "§ 32-702(d)" for "§ 32-702".

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 16-191.** — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.



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**Adultery.**

Whether one party to marriage had adulterous affairs may be considered in dividing property upon divorce. D.C. Code 1981, §§ 16-910,

16-910(b). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

**Agreements.**

**— Authority and discretion of court, agreements.**

A settlement agreement is merged, and not merely incorporated into a court order, where the agreement was adopted by the court as its own determination of the proper disposition of the rights and property between the parties. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Trial court has broad discretion in exercise of its power to adjudicate property rights and support arising from separation agreement. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

**— Bankruptcy, agreements.**

Where pre-divorce agreements between Chapter 7 debtor and his nondebtor wife gave equitable interest in parties' entireties property to wife, so that debtor simply had no interest on petition date to convey to a purchaser, bankruptcy trustee, as hypothetical bona fide purchaser, could not avoid former wife's interest in the property. Bankr.Code, 11 U.S.C. § 544(a); D.C. Code 1981, § 16-910. *Webster v. Hope* (In re Hope), 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Where pre-divorce agreements between Chapter 7 debtor and his nondebtor wife gave equitable interest in parties' entireties property to wife, even if debtor had some interest on petition date to convey to a purchaser, bankruptcy trustee, as hypothetical bona fide purchaser, would have had notice of former wife's interest in the property and so could not have avoided it; although there was no constructive notice because former wife's equitable lien was not recorded, divorce judgment along with separation agreements were sufficient to hold subsequent purchasers or creditors on inquiry notice. Bankr.Code, 11 U.S.C. § 544(a)(3); D.C. Code 1981, § 16-910. *Webster v. Hope* (In re Hope), 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

**— Evidence, agreements.**

Evidence supported trial court's findings that former husband did not accept offer and that no postnuptial agreement existed. D.C. Code 1981, § 16-910. *Hackes v. Hackes*, 446 A.2d 396, 1982 D.C. App. LEXIS 372 (1982).

**— In general.**

Where property settlement agreement provided that property which had been acquired

during coverture and which was held by husband and wife as tenants by the entirety should continue to be held in such manner after divorce and statute permitted divorced persons to so hold property, tax lien filed against former husband after the divorce did not attach to such property even though property had been conveyed out to third parties whose credit permitted refinancing and who immediately reconveyed property back to parties who held as tenants by the entirety. D.C. Code §§ 16-910, 45-501; 26 U.S.C. (I.R.C.1954) § 6672. *Benson v. United States*, 442 F.2d 1221, 1971 U.S. App. LEXIS 11342 (C.A.D.C. 1971).

Where property was initially acquired by husband and wife during coverture and property settlement agreement provided that property would be held in same manner notwithstanding future divorce decree, property settlement agreement was adequate to preserve parties' estate by entirety notwithstanding subsequent divorce decree. D.C. Code § 16-910. *Benson v. United States*, 442 F.2d 1221, 1971 U.S. App. LEXIS 11342 (C.A.D.C. 1971).

In action for divorce, incorporation into the final judgment of a property agreement approved by the parties and their counsel was authorized. *Chinn v. Chinn*, 251 F.2d 391, 1958 U.S. App. LEXIS 3569 (C.A.D.C. 1958).

District of Columbia statute governing equitable distribution of entireties property upon divorce allows parties to bypass court determination of the proper distribution of entireties property by entering into an agreement to deal with their property as they wish. D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

District of Columbia's marital property law recognizes and effectuates terms of prenuptial agreement that court has found to have been validly executed. *Critchell v. Critchell*, 746 A.2d 282, 2000 D.C. App. LEXIS 29 (2000).

Valid antenuptial agreement can create property interest in spouse who does not hold title to property. D.C. Code § 16-910. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

Where property settlement agreement expressly provided that property would continue to be held by husband and wife as tenants by entirety in order to help furnish support to wife as agreed, and where husband was in default of support payments as ordered by Maryland divorce court in amount which represented more than his interests in property, husband's interest in property located in District of Columbia could be awarded to wife as compensation for husband's failure to fulfill his support obligations. D.C. Code §§ 11-1101, 16-910. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

An agreement voluntarily made and intended as a final settlement of property rights and claims of parties to divorce action is bind-

ing on parties and will bar any further claims thereto on the part of either party. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

#### — Separation agreements.

Issue of property division was sufficiently addressed by divorce court, so as to satisfy requirement for application of claim preclusion in later bankruptcy proceedings, where under District of Columbia law court was required to find, even if by stipulation, that there was valid agreement between Chapter 7 debtor and his nondebtor spouse disposing of their property, and court expressly found that parties' separation agreement settled and resolved all issues between parties arising from their marriage, including property rights, even though court did not incorporate or merge agreement into divorce judgment. D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Letter signed by parties, which contained separation agreement, evidenced intent of parties to be bound by terms of letter, and thus, letter was enforceable in dissolution proceeding; parties' signing of letter was clearest evidence of mutual assent to terms of document, and former husband's actions demonstrated his intent to be bound since husband abided by terms for year and half. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Letter signed by parties, which contained separation agreement, was both complete and definite with regard to material terms of parties' dissolution of marriage, and thus, letter was enforceable; language of letter showed that parties understood themselves to have agreed upon basic terms of divorce settlement, letter disposed of marital property, real and personal, and arranged for child's custody, visitation, and support, and since there was no material issue left undisposed and terms were clear, letter was sufficiently complete to be enforceable. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

A separation agreement is a contract, subject to the same law governing other contracts. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

In the absence of fraud, duress, concealment or overreaching, a separation agreement is presumptively valid and binding no matter how ill-advised a party may have been in executing it. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Law encourages use of separation agreements to settle financial affairs of spouses who intend to divorce; this policy is based on the notion that parties are in a better position than court to determine what is fair and reasonable in their circumstances. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).



Where separation agreement recited that the parties had decided to settle all their present and future property rights and matters of custody, support and maintenance and that support payments to wife were to continue until she remarried or died, subsequent divorce had no effect on the continued validity of such agreement though the agreement said nothing about eventual divorce. *Mohler v. Mohler*, 302 A.2d 737, 1973 D.C. App. LEXIS 262 (1973).

Finding that wife, who was an experienced businesswoman, who had had prior dealings with courts and attorneys on occasion of earlier divorce action, and who testified that during hearing on divorce that she understood and voluntarily entered into settlement agreement, had not signed settlement agreement under duress was not erroneous. *Fleischman v. Fleischman*, 285 A.2d 689, 1972 D.C. App. LEXIS 319 (1972).

Where parties were married for less than six years, where no children were born of the marriage, and where wife, who had extensive knowledge and experience in a well-paying employment field, did not contribute financially to any property acquired during marriage, settlement agreement under which wife was to receive \$20,000, most of household furniture and equipment, \$3,000 for new automobile, \$650 per month for support for herself and her daughter, education payment for daughter of between \$1,000 and \$1,500 per year, and other insurance and medical benefits was not unfair on its face as to wife. *Fleischman v. Fleischman*, 285 A.2d 689, 1972 D.C. App. LEXIS 319 (1972).

Where husband and wife entered separation agreement stating that it was contemplated that wife would continue to reside in marital home with children until otherwise determined by parties and that ownership and record title of property would remain unchanged, trial court which entered divorce decree acted properly in refusing to consider rights of parties with respect to home which was situated outside its jurisdiction. D.C. Code § 16-910. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

#### — Specific performance, agreements.

Family Division had jurisdiction to order specific performance of marital property settlement regardless of fact that settlement was not merged into divorce decree, since Family Division is generally entrusted with resolving property disputes between spouses. D.C. Code 1981, § 16-910. *Clay v. Faison*, 583 A.2d 1388, 1990 D.C. App. LEXIS 322 (1990).

#### Authority and discretion of court, generally.

District of Columbia statute providing that on entry of decree of divorce all property rights

of parties in joint tenancy or by entirety shall stand dissolved and court shall apportion property in equitable manner gave trial court no authority over jointly held property located in Maryland. D.C. Code § 16-910. *Argent v. Argent*, 396 F.2d 695, 1968 U.S. App. LEXIS 6797 (C.A.D.C. 1968).

If the trial court in a divorce proceeding does not consider all the relevant factors when it reaches its conclusion on the proper distribution of marital assets, the Court of Appeals cannot determine whether the trial court properly exercised its discretion. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Trial court has broad discretion in distributing marital property in divorce action, and its findings will not be disturbed on appeal if it considers all relevant statutory factors; if trial court's findings of fact, conclusions of law, and judgment, taken together, present integrated, internally consistent, and readily understood whole, its decision will not be disturbed on appeal. D.C. Code 1981, § 16-910. *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

In partition action, trial court did not abuse its discretion in declining to award former husband an equal share of proceeds of sale of the house. D.C. Code 1981, § 16-910(b). *Hairston v. Hairston*, 454 A.2d 1369, 1983 D.C. App. LEXIS 284 (1983).

While the trial court enjoys broad discretion in distributing marital property, its equitable powers are unmistakably applicable only to effectively carry out the purposes of its creative statute. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Trial court is accorded broad discretion in adjusting property rights of parties incident to a divorce and is admonished to consider all relevant factors and arrive at an equitable, just and reasonable division of marital assets. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Court is not required to be informed of the causes of the marital breakdown or to assign fault to either party in order to terminate marriage and assign property. *Murville v. Murville*, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

Where husband and wife, although separated, remained married, court, in action by wife against husband for maintenance and custody of parties' child, had no authority to award husband one half of proceeds of sale of marital abode and damages for personal property of husband allegedly appropriated by wife. D.C. Code SCR, Dom.Rel. Rule 55; D.C. Code §§ 11-1101, 16-910. *Maynard v. Maynard*, 360 A.2d 45, 1976 D.C. App. LEXIS 326 (1976).

Alimony and division of jointly held property are matters entrusted to sound discretion of trial court, and, in exercising that judgment, consideration must be given to all facts and circumstances surrounding parties, and ultimate discretion must be result of considered judgment. *Leibel v. Leibel*, 190 A.2d 821, 1963 D.C. App. LEXIS 231 (App. 1963).

Judgment to be applied by trial court in awarding alimony and making division of jointly held property is an overall judgment, not measured by any yardstick, rule of thumb or mathematical formula, and it is not necessary for trial judge to ascertain with accounting accuracy exact net worth of husband or exact needs of wife, but it is only necessary that award have reasonable basis in evidence, and if it has, reviewing court cannot substitute its judgment for that of trial court. *Leibel v. Leibel*, 190 A.2d 821, 1963 D.C. App. LEXIS 231 (App. 1963).

Court must adjust and apportion property rights in same proceeding in which divorce decree is entered, but only if it has jurisdiction to do so, as this section does not give the court authority to hear issues over which it has no jurisdiction. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

#### **Bankruptcy.**

Under District of Columbia law, divorce of Chapter 7 debtor and his former wife did not vest debtor with an equitable interest in entireties property but, instead, parties' interests were governed by an unrecorded agreement to divide marital property executed some six years prior to their divorce and by their separation agreement, which provided that former wife was to get property's equity, leaving debtor with nothing. D.C. Code 1981, § 16-910. *Webster v. Hope* (In re Hope), 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

#### **Burden of proof.**

Even assuming that husband met his burden of proving that "most" of household items listed in packing inventory were his sole and separate property, trial court's distribution of 80% of marital estate to wife was equitable, in action for divorce; wife had legal or equitable interest in property, in that parties were married for approximately 12 years, husband had prevented wife from working outside home, wife contributed to health and happiness of family, husband refused to seek job commensurate with his skills after he left wife, husband cancelled joined credit cards and depleted joint checking account, husband transferred almost \$50,000 of marital assets to woman other than his wife, and wife had made improvements to marital residence, and but for husband's dissipation of marital estate, wife would have re-

ceived substantially higher amount. *Abulqasim v. Mahmoud*, 2012 WL 3242986 (2012).

In an action for divorce, the party who claims sole and separate ownership has the burden of establishing that the property is his separate property and is therefore not subject to equitable distribution. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Burden of proof rested on wife in divorce action to show amount of her contribution towards purchase of Maryland real property which was used as the family residence, where deed to the property was in name of husband, who was solely liable on the mortgage. *McGean v. McGean*, 339 A.2d 384, 1975 D.C. App. LEXIS 391 (1975).

#### **Construction and application.**

The statute providing that divorce court in same proceeding should have power to award or apportion property owned jointly is concerned solely with matters of procedure and not with substantive powers of court. D.C. Code 1940, § 16-409. *Wheeler v. Wheeler*, 188 F.2d 31, 1951 U.S. App. LEXIS 2959 (C.A.D.C. 1951).

Statute governing equitable distribution of property in divorce proceeding is not primarily concerned with who owned what during marriage; rather, it addresses who will get what after marriage is over. D.C. Code 1981, § 16-910(b). *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 645 A.2d 1105, 1994 D.C. App. LEXIS 130 (1994).

Provision of Marriage and Divorce Act of 1977 governing distribution of marital property upon entry of final decree of annulment or divorce governs all property distributions made pursuant to divorce decrees entered after April 7, 1977, regardless of whether the marriage occurred before that date or whether particular items of marital property were acquired before that date. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

Statute governing distribution of marital property upon entry of final decree of annulment or divorce falls squarely within proper sphere of District of Columbia's police powers over domestic relations. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

Before enactment of 1977 Marriage and Divorce Act, property owned by one spouse could be distributed to other upon dissolution of marriage only if some right or element of ownership, legal or equitable, could be found in spouse who did not hold title, and language of the new Act does not indicate an intent to abolish or restrict this approach. D.C. Code § 16-901 et seq. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

#### **Construction with other laws.**

Difference between terms "award and appor-



tion" as used in District of Columbia statute relating to court's authority to apportion property in divorce action and terms "determine and adjudicate" as used in statute relating to general jurisdictional grant to Domestic Relations Branch is simply difference between directly and indirectly affecting title to land. D.C. Code §§ 11-1141, 16-910. *Argent v. Argent*, 396 F.2d 695, 1968 U.S. App. LEXIS 6797 (C.A.D.C. 1968).

Uniformed Services Former Spouses Protection Act allows courts to apply state divorce laws to military pensions, but does not expressly or impliedly grant any court power to adjudicate any cause or provide any substantive rule for treatment of military pensions in divorce or domestic relations context. 10 U.S.C. § 1408. *Brown v. Harms*, 863 F. Supp. 278, 1994 U.S. Dist. LEXIS 13897 (1994).

Former wife waived any claim to property interest in husband's pension by virtue of validly executed prenuptial agreement stating that each party shall keep and retain sole ownership of all property now owned or hereafter solely acquired by him and no property titled to either party separately shall be considered marital property; ERISA expressly deferred to state law to determine if former spouse had interest in her spouse's pension, and District of Columbia recognized prenuptial agreements found to be valid in a court of law. Employee Retirement Income Security Act of 1974, § 206(d)(3)(B)(ii)(2), as amended, 29 U.S.C. § 1056(d)(3)(B)(ii)(2). *Critchell v. Critchell*, 746 A.2d 282, 2000 D.C. App. LEXIS 29 (2000).

Employee Retirement Income Security Act (ERISA) does not preempt District of Columbia's marital property law with respect to divorced wife's ability to waive her potential property interest in her husband's pension by validly executed prenuptial agreement. Employee Retirement Income Security Act of 1974, § 2 et seq., as amended, 29 U.S.C. § 1001 et seq. *Critchell v. Critchell*, 746 A.2d 282, 2000 D.C. App. LEXIS 29 (2000).

Meaning of term owner under marriage dissolution equitable distribution of property statute was not applicable to uninsured motorist fund statute. D.C. Code 1981, §§ 16-910, 35-2102(21). *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 645 A.2d 1105, 1994 D.C. App. LEXIS 130 (1994).

The 1978 amendments to the Civil Service Act authorizing federal cooperation with property settlements ordered by state courts does not require state courts to treat civil service pensions as marital or community property. 5 U.S.C. § 8345(j)(1). *Barbour v. Barbour*, 464 A.2d 915, 1983 D.C. App. LEXIS 429 (1983).

### Constructive trust.

In divorce proceedings, legal title is not dispositive and equitable interests may prevail,

and thus third parties' legal title cannot be permitted to extinguish all or part of spouse's equitable interests, which may be enforced by imposing on the titleholder a constructive trust. *Gore v. Gore*, 638 A.2d 672, 1994 D.C. App. LEXIS 25 (1994).

Imposition of constructive trust on property held by husband and wife as tenants by entireties was not justified and property was to pass to surviving spouse, even though prior to deceased spouse's death, surviving spouse abandoned marital abode, deceased spouse filed complaint for absolute divorce, surviving spouse filed answer, and deceased spouse purported to will property to her daughters. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

### Debts.

A party's "debts" are a factor enumerated in statute governing distribution of marital property and are relevant to the court's allocation of property and marital debt. D.C. Code 1981, § 16-910(b). *Bernard v. Bernard*, 730 A.2d 663, 1999 D.C. App. LEXIS 126 (1999).

Individual creditors had causes of action for debts incurred by wife after separation and before filing of complaint for separate maintenance, and divorce decree was not objectionable for refusal to order husband to assume responsibility for those debts. D.C. Code § 16-916(a). *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

### Dissipation.

"Dissipation" is the disposition of marital property by a spouse in a manner intended to circumvent the equitable distribution of the marital estate, and this may be shown by prima facie evidence, un rebutted, that the spouse used marital property for his own benefit and for a purpose unrelated to the marriage at a time when the marriage was undergoing an irreconcilable breakdown. D.C. Code 1981, § 16-910(b). *Herron v. Johnson*, 714 A.2d 783, 1998 D.C. App. LEXIS 125 (1998).

Upon a finding of dissipation of marital property, the court must distribute the property in question and enter judgment accordingly, whether or not the asset still exists. D.C. Code 1981, § 16-910(b). *Herron v. Johnson*, 714 A.2d 783, 1998 D.C. App. LEXIS 125 (1998).

### Equity of distribution.

Award of all of parties' property to divorced husband was not abuse of discretion, where there was no evidence as to wife's contribution to property after first few years of marriage, and evidence concerning early years was in conflict. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Requirement of District of Columbia statute governing equitable distribution of entireties property upon divorce, that court distribute property in a manner that is equitable, just, and reasonable, after considering all relevant factors, does not mean that marital property must be divided equally. D.C. Code 1981, § 16-910(b). *Webster v. Hope* (In re *Hope*), 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Trial court in divorce action did not abuse its discretion by not awarding wife an equitable interest in residence which husband acquired prior to the parties' ceremonial marriage and which was titled in husband's name, where husband and wife were married for only five years and lived together in the residence for less than two years, husband made a majority of the mortgage payments from his earnings both separate and marital, the rest of the mortgage payments came from rental income, and wife contributed only \$3,000 for repairs to the residence while husband made payments on the residence in the amount of \$151,699. *Bansda v. Wheeler* (In re *Ekekwe*), 995 A.2d 189, 2010 D.C. App. LEXIS 266 (2010).

Trial court did not use improper standard of equal, as opposed to correct standard of equitable, in dividing the marital assets incident to divorce; although trial court responded to counsel's use of the word "equal" with "right," trial judge was merely acknowledging that he understood the merits of counsel's argument rather than affirming, or subscribing to, the merits of counsel's contention, and, prior to distributing the marital property, trial court expressly cited to the relevant marital property statute and expressly used the word "equitable" in describing the method used for making a property division. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

There is no statutory requirement that a party to a divorce proceeding receive an equal distribution of a marital asset, only an equitable distribution, taking into account, inter alia, each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets subject to distribution. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

An equitable distribution requires the court in a divorce proceeding to consider the current values of the marital property, such that upon distribution, each party's needs are adequately addressed. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

When presented with agreement to which professional spouse with interest in law partnership is bound, it is inequitable to disregard terms of that agreement and award nonprofessional spouse interest in law firm beyond that enjoyed by professional spouse. D.C. Code 1981, § 16-910. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Trial court in divorce action exceeded its authority in awarding \$1,430 to wife in compensation for her property which husband allegedly destroyed some seven years before commencement of action for divorce. *Turner v. Taylor*, 471 A.2d 1010, 1984 D.C. App. LEXIS 308 (1984).

Statute governing distribution of property upon entry of final decree of annulment or divorce does not require that marital property be divided equally; rather, the statute calls for distribution "in a manner that is equitable, just and reasonable." D.C. Code 1981, § 16-910(b). *Barbour v. Barbour*, 464 A.2d 915, 1983 D.C. App. LEXIS 429 (1983).

In distribution of property accumulated during marriage, trial court did not abuse its discretion in awarding 50% interest of bond to each party even though all of fund for its purchase came from sale of house owned individually by husband previous to the marriage. D.C. Code § 16-910(b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

In action for divorce, trial court did not abuse its discretion in distributing 75% interest in apartment to wife even though bulk of payment therefor had come from sale of home which husband had owned individually previous to the marriage. D.C. Code § 16-910(b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Although parties were listed as tenants by entirety in home, the award of property entirely to husband was within discretion of trial court in divorce case, where neither husband nor wife had made significant financial contribution to purchase or improve the property and only husband was obligated to repay to his mother the loan which made possible the purchase and improvements. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

Although divorce court awarded the parties an equal interest in jointly owned realty, it was not abuse of discretion to vest exclusive possession in the wife for three years where she was required to assume sole responsibility for payment of encumbrances, taxes, insurance and maintenance. D.C. Code § 16-910. *Finch v. Finch*, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

Trial court, in divorce proceedings, did not abuse discretion in award of sole title to jointly owned home to wife, despite husband's contention that appropriate significance was not attached to alleged disproportionality of spouses' relative contributions to freehold. D.C. Code § 16-910. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Dividing marital property equally among the parties who are both employed and who had contributed equally to purchase and upkeep of property was not an abuse of discretion. D.C.



Code § 16-910. *Lee v. Lee*, 307 A.2d 757, 1973 D.C. App. LEXIS 326 (1973).

Where wife had been employed for substantial period during marriage and had contributed out of her own funds to purchase of house owned in joint names, and house was both home for children, whose custody was awarded to wife, and also source of some rental income, court did not abuse its discretion in awarding wife sole title to home. D.C. Code § 16-910. *Grasty v. Grasty*, 302 A.2d 218, 1973 D.C. App. LEXIS 253 (1973).

Where wife, who was given \$27,000 check by her father for downpayment on home, provided total contribution to property, wife upon divorce received custody of all five children, four of whom lived with her, wife was awarded modest support payments, in face of her expenses, and parties had lived together in new home for only short period of time, title to home should have been awarded to wife upon divorce. *Chamberlain v. Chamberlain*, 287 A.2d 530, 1972 D.C. App. LEXIS 345 (1972), writ of certiorari denied by 409 U.S. 892, 93 S. Ct. 132, 34 L. Ed. 2d 149, 1972 U.S. LEXIS 1802 (1972).

Order in divorce proceeding requiring that title to home, which was held in name of both parties, be placed in husband's name alone, based on finding that husband had purchased home prior to marriage and had thereafter maintained it with his resources, was within discretion of trial court and would not be disturbed on appeal. *Johnson v. Johnson*, 257 A.2d 482, 1969 D.C. App. LEXIS 337 (App. 1969).

Division of real property, in action by husband for absolute divorce on ground of voluntary separation, awarding  $\frac{1}{2}$  interest to husband who, after 1962, made majority of payments on house, and  $\frac{1}{2}$  interest to wife, who had arbitrarily appropriated jointly owned personalty, was not abuse of discretion. D.C. Code § 11-1141(a)(9). *Stanley v. Stanley*, 234 A.2d 810, 1967 D.C. App. LEXIS 204 (App. 1967).

Denial to wife, divorced on ground of adultery, of any share in home property held by husband and wife as tenants by entirety was not abuse of discretion. D.C. Code 1961, § 16-409. *Pearsall v. Pearsall*, 197 A.2d 269, 1964 D.C. App. LEXIS 194 (App. 1964).

Trial court which granted wife divorce on grounds of husband's desertion did not abuse its discretion in ruling that husband was entitled to mortgaged residential real estate, held in joint names, free from any claim of wife. *Lundregan v. Lundregan*, 176 A.2d 790, 1962 D.C. App. LEXIS 238 (Cr.App. 1962).

### Estoppel.

Former wife was estopped from arguing on appeal that marital home was her sole and separate property not subject to distribution under statute where former wife had posited at trial that the house was subject to distribution

by the court. D.C. Code 1981, § 16-910. *Hackes v. Hackes*, 446 A.2d 396, 1982 D.C. App. LEXIS 372 (1982).

### Evidence.

Best evidence rule did not apply to wife's testimony about e-mail that husband had sent to wife's sister professing his love for sister and plan to meet sister in Egypt, in action for divorce, where e-mail testimony was not offered to prove truth of romantic relationship between husband and sister but to explain wife's actions, and to extent trial court mentioned romantic relationship between husband and sister in context of equitable distribution of marital, it was in connection with husband's decision to abandon wife and children and transfer of almost \$50,000 in marital assets to sister. *Abulqasim v. Mahmoud*, 2012 WL 3242986 (2012).

Evidence supported trial court's finding that husband had sacrificed his music career for the marriage, for purpose of applying statutory factor, under marital property distribution statute, of "each party's increase or decrease in income as result of the marriage"; husband testified to the parties' agreement that he find more stable employment after the wedding, and the trial court credited husband's testimony on the matter. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Evidence was sufficient to support finding that husband did not transfer parking spaces to wife when husband transferred apartments as gift; parking space was not included on apartments' ownership documents, and there was no evidence demonstrating any delivery of an ownership interest. *Zoob v. Jordan*, 841 A.2d 761, 2004 D.C. App. LEXIS 37 (2004).

Husband had delivered to wife intended gift of joint ownership interest in each of two cooperative apartments, although usual procedure for adding names to ownership documents was not followed and wife did not sign contracts, where husband arranged for written notation on "Statement of Ownership" for apartment stating that contract was to be amended to reflect joint ownership and repeatedly requested that wife's name be added, and cooperative association board approved deeds after wife's name had been added. *Zoob v. Jordan*, 841 A.2d 761, 2004 D.C. App. LEXIS 37 (2004).

Evidence was sufficient to support finding that husband had intended to transfer claimed ownership interests in two cooperative apartments to wife, even though property was still titled in husband's name only; there was evidence that apartment was purchased jointly, there was evidence wife was general contractor during apartment's renovation and contributed money toward renovation, there was evidence that other apartment was purchased with intent to convert two apartments into one resi-

dence, and statement of ownership noted it was to be amended to "reflect joint ownership." *Zoob v. Jordan*, 841 A.2d 761, 2004 D.C. App. LEXIS 37 (2004).

Relevance of factors that a trial court weighs in a divorce proceeding before reaching a conclusion about the proper distribution of marital assets is a function of the particular evidence before the court and the issues arising therefrom. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Trial court in divorce action did not consider all relevant factors when valuing newspaper business, a marital asset subject to equitable distribution, that husband established shortly after separation; trial court made no finding that the valuation of \$80,000 reasonably reflected an accurate market value, where trial court arrived at valuation figure by determining one half of the business was worth \$40,000, which was the amount husband's mother gave him for a 50 percent interest in the business two days before trial commenced. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

For purposes of statute directing trial court to consider all relevant evidence in arriving at distribution of marital property, relevance is a function of the particular evidence before the trial court and the issues arising therefrom, but subject to this limitation, the trial judge must engage in a conscientious weighing of all relevant factors, statutory or otherwise, before reaching a conclusion about the proper distribution of property. D.C. Code 1981, § 16-910(b). *Bernard v. Bernard*, 730 A.2d 663, 1999 D.C. App. LEXIS 126 (1999).

Wife was entitled to call husband's female co-worker, to whom wife contended husband had transferred assets to conceal them, and to examine both co-worker and husband with regard to any allegedly inequitable divestitures; statute required court to consider, among other things, each party's contribution to acquisition, preservation, appreciation, dissipation or depreciation in value of marital estate and no statutory or common-law privilege was asserted by female co-worker nor did she present any other equitable argument urging that she be excused from testifying or from complying with subpoena duces tecum. D.C. Code 1981, § 16-910(b). *Cox v. Cox*, 639 A.2d 97, 1994 D.C. App. LEXIS 41 (1994).

Evidence was sufficient for Superior Court to conclude that wife's medical bills incurred during the marriage were marital debts of which husband was partially responsible where husband did not indicate until after wife underwent treatment that he would no longer bear responsibility for medical costs incurred after parties ceased living together, husband obtained health insurance for wife while they

were living together but did not cancel her coverage after they began living apart, and husband advised hospital that he would provide insurance forms to cover wife's treatment. *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

In divorce case, trial court did not abuse its discretion in denying husband's motion requesting that court conduct in camera inspection of documents which were claimed to be relevant to determination of property ownership where husband had had ample opportunity to introduce documents in course of four-day trial and the documents would not have conclusively established either ownership or distributability of property. *Darling v. Darling*, 444 A.2d 20, 1982 D.C. App. LEXIS 316 (1982).

In divorce case, evidence supported finding that corporate stock in husband's name was an asset acquired during parties' marriage, not asset acquired in exchange for property which husband owned before marriage, so that it was subject to distribution by the court. D.C. Code 1978 Supp. § 16-910(b). *Darling v. Darling*, 444 A.2d 20, 1982 D.C. App. LEXIS 316 (1982).

Where civil contempt order imposed fine rather than imprisonment and was not for failure to pay debts but for failure to do specific acts to facilitate sale of real estate, case was governed by general rule, not exception, and, once noncompliance with decree was established, burden of establishing justification for noncompliance shifted to alleged contemnor. D.C. Code § 16-901 et seq. *Bolden v. Bolden*, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

Evidence that wife's father intended to make gift to his daughter alone by delivery to her of check in her name in amount of \$27,000, which she thereafter endorsed and deposited in joint account with her husband for purpose of making downpayment on home to be occupied by donor, his daughter, and daughter's husband, in absence of any further showing of delivery to husband or an intention of donor to bestow upon husband alone, or generally with his wife, a gift of any interest in the household, failed to support finding, in divorce action in which husband and wife were awarded undivided one-half interest as tenants in common in home, that donor made a gift to both parties. D.C. Code § 16-910. *Chamberlain v. Chamberlain*, 287 A.2d 530, 1972 D.C. App. LEXIS 345 (1972), writ of certiorari denied by 409 U.S. 892, 93 S. Ct. 132, 34 L. Ed. 2d 149, 1972 U.S. LEXIS 1802 (1972).

In divorce action, husband should have been allowed to present evidence in support of his allegation that three pieces of real estate were in reality jointly owned even though property was recorded in individual names of parties. D.C. Code § 11-114(a)(9). *Dickason v. Dickason*,



263 A.2d 640, 1970 D.C. App. LEXIS 242 (App. 1970).

### **Failure to adjudicate property rights.**

Fact that trial court did not distribute marital property of divorcing spouses did not conclusively establish that the spouses had settled their respective rights in each other's assets, so as to warrant revocation of wife's will by implication of law. D.C. Code 1981, §§ 16-910, 18-109. *Estate of Reap v. Malloy*, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Failure to make adjudication of property rights between parties to marriage annulment proceeding was not error, where there was no jointly owned property and no property acquired by parties' joint efforts and thus no property properly subject to adjudication. D.C. Code 1961, § 16-910. *Jett v. Jett*, 221 A.2d 925, 1966 D.C. App. LEXIS 205 (App. 1966).

### **Finality of orders.**

Order granting wife's complaint for absolute divorce, awarding her alimony, child support, and joint custody of parties' minor child, and determining and setting values on marital assets subject to distribution was not final and appealable, where trial court failed to make any actual distribution of marital assets or to determine which assets were to be received by each party. D.C. Code 1981, §§ 11-721, 11-721(a)(2)(C), 16-910(b). *McDiarmid v. McDiarmid*, 594 A.2d 79, 1991 D.C. App. LEXIS 195 (1991), remanded by 649 A.2d 810, 1994 D.C. App. LEXIS 191 (D.C. 1994).

### **Findings.**

Corrosive effect created by wife's long-time extramarital affair with the parties' attorney, family friend, and business partner was appropriately considered by trial court to have been the primary factor that led to the parties' estrangement, which was a statutory factor used for equitably distributing the marital property incident to divorce. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Trial court gave meaningful consideration to each party's contributions to the acquisition, preservation, appreciation, dissipation, or depreciation in value of the four marital properties, for purpose of equitably distributing the assets incident to divorce; trial court took note of facts that, while husband may have experienced substantial periods of unemployment, he renovated the properties and tended to the marital home in addition to doing the grocery shopping, driving wife to work, performing repair work and installations on the properties, and contributing his paychecks to the parties' joint account. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Although extent to which trial court must state its findings in dividing marital property cannot be defined precisely, findings need only

be sufficient to allow meaningful appellate review; as long as findings contain sufficient detail to allow Court of Appeals to be in position to review trial court's rulings for errors of law and clear factual errors, record is adequate. *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

With regard to division of marital property, trial court's findings of fact, conclusions of law and judgment, taken together, must present integrated, internally consistent and readily understood whole. D.C. Code 1981, §§ 16-910, 16-910(b). *Negretti v. Negretti*, 621 A.2d 388, 1993 D.C. App. LEXIS 58 (1993).

In equally dividing family residence, trial court failed to make written findings of fact and conclusions of law sufficient to permit judicial review, requiring remand. D.C. Code 1981, § 16-910(b); Domestic Relations Rule 52(a). *Pimble v. Pimble*, 521 A.2d 1173, 1987 D.C. App. LEXIS 302 (1987).

In proceeding in which divorce was granted on ground of voluntary separation for one year and in which spouses' assets were divided, trial court's findings had sufficient support in the evidence and were sufficiently detailed so as to enable Court of Appeals to exercise meaningful review. D.C. Code 1973, § 17-305(a). *Murville v. Murville*, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

### **Foreign property.**

In a divorce action, District of Columbia court could not award and apportion property located in Maryland but it did have jurisdiction to determine and adjudicate rights of parties before it to such property and direct parties to execute such instruments as were necessary to effectuate that adjudication. D.C. Code §§ 11-1141, 11-1161, 16-910. *Argent v. Argent*, 396 F.2d 695, 1968 U.S. App. LEXIS 6797 (C.A.D.C. 1968).

District of Columbia courts are authorized to adjust and apportion property rights in property held jointly by parties to divorce action and must do so in same proceeding in which divorce decree is entered although their enforcement power as to property located in another state is limited to determination and adjudication of parties' rights. D.C. Code §§ 7-1141, 16-910. *Argent v. Argent*, 396 F.2d 695, 1968 U.S. App. LEXIS 6797 (C.A.D.C. 1968).

Action brought by husband, who had been granted divorce in Maryland on ground of wife's desertion, to declare forfeited wife's one-half interest in funds arising from sale of marital domicile in Maryland was an equity action which District of Columbia court had jurisdiction of on basis of its general grant of authority under statute. D.C. Code 1961, §§ 11-306, 16-910. *Hardy v. Hardy*, 250 F. Supp. 956, 1966 U.S. Dist. LEXIS 9735 (D.D.C.1966).

In a divorce action, the court may adjudicate the rights to marital property located outside the District, and may issue orders requiring the parties to make transfers implementing the court's ruling, even though the court cannot directly award and apportion the foreign property. *Davis v. Davis*, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

Where divorce decree was entered in District of Columbia, parties no longer held Maryland real estate as tenants by entirety but as tenants in common by force of Maryland law. D.C. Code § 16-910. *Argent v. Argent*, 233 A.2d 142, 1967 D.C. App. LEXIS 188 (App. 1967), reversed by 396 F.2d 695, 130 U.S. App. D.C. 46, 1968 U.S. App. LEXIS 6797 (1968).

### Fraudulent conveyance.

Where District of Columbia debtor has transferred entireties property to nondebtor spouse, fraudulent conveyance may exist if debtor agreed to nondebtor spouse's receiving more than any rational application of District of Columbia's factors for dividing up entireties property upon divorce would have yielded had matter been litigated. Bankr.Code, 11 U.S.C. § 548; D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

In determining whether Chapter 7 debtor's conveyance of entireties property to his nondebtor spouse upon their prepetition divorce, in exchange for her forgiveness of certain child support arrearages, was a fraudulent transfer, "reasonably equivalent value" of debtor's treatment had to be viewed against debtor's entitlement to the property under District of Columbia law. Bankr.Code, 11 U.S.C. § 548(a)(2); D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

### In general.

Exercise of sound judicial discretion is required in adjusting property rights of parties in action for divorce. *Stanley v. Stanley*, 234 A.2d 810, 1967 D.C. App. LEXIS 204 (App. 1967).

Statute governing distribution of marital property upon divorce does not create presumption that property should be divided equally; no hard or fast rule or mathematical formula should be applied in adjudicating property rights, and each case must be decided on its own merits. D.C. Code 1981, § 16-910(b). *Mitchell v. Mitchell*, 194 A.2d 828, 1963 D.C. App. LEXIS 309 (App. 1963).

Trial court is accorded broad discretion in adjusting property rights of parties incident to divorce; as long as trial court properly applies statutory guidelines and considers all relevant factors, its conclusion will not be disturbed on appeal. D.C. Code 1981, § 16-910. *Hales v.*

*Hales*, 207 A.2d 657, 1965 D.C. App. LEXIS 163 (App. 1965).

"Property rights" within statute providing that upon entry of final decree of annulment or divorce a vinculo, all "property rights" of the parties in joint tenancy or tenancy by the entirety shall stand dissolved, and court shall have power to make an equitable apportionment thereof, includes not only real but personal property as well. D.C. Code 1940, § 16-409. *Slaughter v. Slaughter*, 171 F.2d 129, 1948 U.S. App. LEXIS 2792 (1948).

District of Columbia statute governing equitable distribution of entireties property upon divorce contemplates that courts must adjust and apportion property rights, or determine that valid agreement exists that already does so, in the same proceeding in which divorce decree is entered. D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Divorce law contains no presumption in favor of equal distribution of property, and instead requires trial court to divide marital property in manner that is equitable, just, and reasonable, after considering all relevant factors, including but not limited to enumerated statutory factors. D.C. Code 1981, § 16-910(b). *Burwell v. Burwell*, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Equitable distribution of property upon dissolution of marriage requires court to consider current values of marital property, such that, upon distribution, each party's needs are adequately addressed, and there are circumstances in which distribution of assets based on stale valuations violates statutory provisions requiring that distribution be equitable, just and reasonable. D.C. Code 1981, § 16-910. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Court is required by statute to consider only relevant factors in dividing marital property upon divorce, and its disposition of marital assets must be based on assessment of totality of circumstances. D.C. Code 1981, § 16-910(b). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

In distributing marital property to parties to divorce action, court must consider all relevant factors, which vary in each case, and arrive at disposition based upon assessment of totality of circumstances; so long as trial court considers all relevant factors, conclusions will not be disturbed on appeal, but trial court's findings of fact, conclusions of law and judgment, taken together, must present integrated, internally consistent and readily understood whole. D.C. Code 1981, § 16-910. *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

Since statute carefully limits types of property over which a court may exercise discretion in a divorce action, it is not up to court to



determine what property it may distribute. D.C. Code 1981, § 16-910. *Turner v. Taylor*, 471 A.2d 1010, 1984 D.C. App. LEXIS 308 (1984).

Except as to separate property acquired before marriage or property acquired in exchange therefor, court in divorce case may exercise broad discretion in distributing all other property accumulated during marriage, without regard to title. D.C. Code 1978 Supp. §§ 16-910, 16-910(a, b). *Darling v. Darling*, 444 A.2d 20, 1982 D.C. App. LEXIS 316 (1982).

In action for divorce, trial judge's broad discretion in allocating property statutorily allocatable is unaffected by enumeration in statute of several nonexclusive factors that trial court is to consider in exercise of its discretion. D.C. Code § 16-910(b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Regardless of how a certain asset is titled, if it was acquired during marriage other than by gift, bequest, devise, or descent to one spouse, or by increase thereof or in exchange therefor, it is subject to distribution in action for divorce whether or not both spouses made actual contributions, financial or otherwise, to acquisition and maintenance of the property. D.C. Code § 16-910(a, b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

In adjusting property rights of parties incident to divorce, no hard and fast rule can be laid down and each case must be decided on its particular circumstances; thus so long as trial court considers all relevant factors, its conclusions will not be disturbed on appeal. D.C. Code § 16-910. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

Domestic relations branch of the superior court has broad discretion, upon entry of a final decree of divorce, to apportion property which is jointly owned by the spouses, and the shares awarded need not simply reflect each party's financial investment in the property. D.C. Code § 16-910. *McGean v. McGean*, 339 A.2d 384, 1975 D.C. App. LEXIS 391 (1975).

The Domestic Relations Branch of the Superior Court can adjudicate the respective rights of the parties to divorce action in any or all property to which one or the other makes claim. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

In a divorce proceeding the court may adjudicate the property rights of the spouses, and award the wife property which belongs to her. Act of Sept. 9, 1959, 73 Stat. 473; D.C. Code § 11-1101(8). *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

A direct financial contribution is not the sole or necessarily the decisive factor in settling property rights upon dissolution of a marriage. D.C. Code § 16-910. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

Any judicial authority to award property not jointly held is to be found in general equity power rather than in statute providing for dissolution of joint tenancy or tenancy by the entirety upon final decree of absolute divorce and authorizing court apportionment in such manner as seems equitable, just and reasonable. D.C. Code § 16-910. *Mumma v. Mumma*, 280 A.2d 73, 1971 D.C. App. LEXIS 188 (1971).

A divorce court in the District of Columbia has no authority to award the husband's property to the wife in lieu of, or in addition to, the sum of money allowed for her support. *Argent v. Argent*, 233 A.2d 142, 1967 D.C. App. LEXIS 188 (App. 1967), reversed by 396 F.2d 695, 130 U.S. App. D.C. 46, 1968 U.S. App. LEXIS 6797 (1968).

District of Columbia statute providing that upon entry of divorce all property rights of parties in joint tenancy or tenancy by entirety shall stand dissolved and court shall have power to award property in equitable manner allows trial court a broad discretion in award or apportionment of jointly held property. D.C. Code § 16-910. *Argent v. Argent*, 233 A.2d 142, 1967 D.C. App. LEXIS 188 (App. 1967), reversed by 396 F.2d 695, 130 U.S. App. D.C. 46, 1968 U.S. App. LEXIS 6797 (1968).

Where wife entitled to divorce has legal or equitable interest in property not jointly held by husband and wife, court of general sessions may adjudicate property rights of the parties and award wife property belonging to her. D.C. Code 1961, § 16-409. *Hunt v. Hunt*, 208 A.2d 731, 1965 D.C. App. LEXIS 178 (App. 1965).

Trial court has authority, when divorce is granted, to adjudicate all property disputes between parties and to partition jointly-held property, but if no divorce is granted, court cannot partition property unless parties consent. *Mitchell v. Mitchell*, 194 A.2d 828, 1963 D.C. App. LEXIS 309 (App. 1963).

While direct financial contribution by wife is important factor in determining property division in divorce action, it is not sole and decisive factor, and trial court must exercise sound judicial discretion in adjusting property rights. *Lundregan v. Lundregan*, 176 A.2d 790, 1962 D.C. App. LEXIS 238 (Cr.App. 1962).

### Insurance.

Doctrine of equitable estoppel required husband to continue insurance coverage for wife after parties ceased living together, but prior to divorce where husband acquiesced to coverage of wife's medical treatment under health insurance and wife relied upon that acquiescence; therefore, husband should be required to submit insurance claim forms for all outstanding medical bills which were incurred during parties' marriage and not just those costs incurred from hospital. *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

Superior Court must determine appropriate amount, if any, that husband must bear regarding wife's medical bills to the extent that bills are not paid by husband's medical insurance. D.C. Code 1981, § 16-910(b). *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

### Jurisdiction.

Where husband and wife's agreement incorporated in divorce decree settles only property rights, its inclusion in judgment does not confer jurisdiction to modify it. D.C. Code 1951, § 16-413. *Rogers v. Rogers*, 203 F.2d 61, 1953 U.S. App. LEXIS 3334 (C.A.D.C. 1953).

In suit by wife for divorce on grounds of cruelty, district court had jurisdiction under its general equity powers to adjudicate and settle a dispute between the parties concerning their respective rights in funds and property which had been acquired by them during marriage or incident thereto. D.C. Code 1940, § 11-325. *Reilly v. Reilly*, 182 F.2d 108, 1950 U.S. App. LEXIS 2758 (C.A.D.C. 1950).

District of Columbia Code to effect that, upon entry of final decree of divorce, all property rights of parties in joint tenancy or tenancy by entirety shall stand dissolved and court shall have power to award property to one lawfully entitled thereto was intended to endow court which entered divorce decree with power to adjudicate, in same action, property rights of parties before it, but statute is not the sole basis upon which court can exercise jurisdiction where parties before it have been divorced by a foreign decree. D.C. Code 1961, § 16-910. *Hardy v. Hardy*, 250 F. Supp. 956, 1966 U.S. Dist. LEXIS 9735 (D.D.C.1966).

In view of stipulation that prior to arrest of husband ultimately convicted of felony involving moral turpitude, all properties in which wife seeking divorce claimed interest had stood in name of husband and wife as tenants by entireties, court of general sessions acted properly in taking jurisdiction, hearing divorce case, and in finding amply supported by record that husband and wife had remained the equitable owners of the properties. *Hunt v. Hunt*, 208 A.2d 731, 1965 D.C. App. LEXIS 178 (App. 1965).

Where neither divorced wife's motion for an increase in alimony nor husband's cross motion for a reduction thereof mentioned a certain automobile in question, and only issue before the court was question of increase or reduction of alimony, there was no basis for entry of an order transferring title to the automobile to wife. *Burke v. Burke*, 161 A.2d 56, 1960 D.C. App. LEXIS 201 (Cr.App. 1960).

Under amendment to jurisdictional section of Domestic Relations Branch Act giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications

of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, Domestic Relations Branch of Municipal Court has authority, on granting a limited divorce, to award, or partition the property, real or personal, held by the parties jointly or by entirety, in the same manner in which it may act on granting an absolute divorce. D.C. Code 1951, § 11-762. *Posnick v. Posnick*, 160 A.2d 804, 1960 D.C. App. LEXIS 197 (Cr.App. 1960).

Under amendment to jurisdictional section of Domestic Relations Branch Act, giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, the Domestic Relations Branch has jurisdiction in a divorce action to adjudicate all property disputes between the parties. D.C. Code 1951, § 11-762. *Posnick v. Posnick*, 160 A.2d 804, 1960 D.C. App. LEXIS 197 (Cr.App. 1960).

### Limited divorce.

Statute providing that on entry of final decree of annulment or divorce a vinculo, in absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of parties in joint tenancy or tenancy by the entireties shall stand dissolved and court shall determine property rights, was not applicable in suit by wife for a limited divorce on grounds of cruelty. D.C. Code 1940, § 16-409. *Reilly v. Reilly*, 182 F.2d 108, 1950 U.S. App. LEXIS 2758 (C.A.D.C. 1950).

District of Columbia court acted properly in reinstating order that husband reimburse the wife for any payments she made on joint or joint and several obligations which was originally set forth in the initial judgment of limited divorce but was omitted from the later divorce decree. In re *Smith*, 3 B.R. 224, 1980 Bankr. LEXIS 5462 (1980).

### Marital property.

Trial court's determination that home was husband's sole and separate property was abuse of discretion; home was purchased during marriage and was not acquired by gift, bequest, devise or descent, and trial court failed to make findings on statutory factors governing equitable distribution of marital property. *Young-Jones v. Bell*, 967 A.2d 1262, 2009 D.C. App. LEXIS 51 (2009).

Newspaper business that husband began shortly after separation was marital property subject to equitable distribution in divorce proceedings, as the \$40,000 given to husband by his brother to establish the business was a reimbursement of marital funds, and therefore, not husband's sole and separate property.



Barnes v. Sherman, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Husband's conveyance of his joint half interest in property with his brother to himself and his wife in new form of tenancy converted non-marital property into marital property, just as brother created marital property with his conveyance of other half interest to husband and wife, though husband and his brother could have elected not to convey the property. Burwell v. Burwell, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Wife had no equitable interest in husband's townhouse acquired before marriage. Prost v. Greene, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Whether income from separate property acquired during marriage constitutes "marital property" has not been decided in District of Columbia. D.C. Code 1981, § 16-910(a). McDiarmid v. McDiarmid, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Because marital home was acquired during parties' marriage, it was marital property which court accordingly had broad discretion to distribute, without regard to title, in equitable, just and reasonable manner. D.C. Code 1981, § 16-910(b). Jordan v. Jordan, 616 A.2d 1238, 1992 D.C. App. LEXIS 293 (1992).

In action for divorce, bond which was acquired during marriage and was titled to both spouses as joint owners was distributable as property accumulated during the marriage even though all funds for its purchase came from sale of house which husband owned individually previous to the marriage. D.C. Code § 16-910(a, b). Turpin v. Turpin, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

In action for divorce, cooperative apartment which was jointly funded, jointly owned, and jointly lived in by parties was distributable as property accumulated during marriage and was not "full and separate" property of husband even though bulk of payment therefor came from sale of home which husband had owned individually previous to the marriage. D.C. Code § 16-910(a, b). Turpin v. Turpin, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

"Marital property," property initially acquired in such a way as to be apportionable by trial court in action for divorce, cannot be transformed into "sole and separate property acquired during the marriage by gift" for purposes of assignment to recipient of gift by any subsequent action of a spouse such as purported gift of sole ownership from one spouse to the other; if the property initially was acquired as "marital property" during course of marriage it will remain so for purposes of distribution upon divorce, notwithstanding any subsequent interchange between the two spouses. D.C.

Code § 16-910(a, b). Turpin v. Turpin, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Where husband attained his degree primarily through his own efforts and his willingness to work continuously while undergoing the rigors attendant to the pursuit of his goal, the wife should not be awarded an equitable interest in his future earnings as such an award would suggest that the law degree represented a mutual effort on the part of the parties. Hill v. Hill, 114 WLR 2209 (Super. Ct. 1986).

#### **Military.**

Uniformed Services Former Spouses Protection Act (USFSPA) does not purport to confer subject matter jurisdiction on any court, but merely allows court of competent jurisdiction to treat military retirement pay as spousal or community property in accordance with the law of the jurisdiction of that court. 10 U.S.C. § 1408(c)(1). Brown v. Harms, 863 F. Supp. 278, 1994 U.S. Dist. LEXIS 13897 (1994).

#### **Motions.**

Motion to amend the divorce decree to specify percentage of retirement benefits to which former wife was entitled was based on allegation of "mistake" or "excusable neglect" and, as such, was subject to one-year limitations period; accordingly, former wife could not obtain relief under rule allowing relief for "any other reason" absent showing of extraordinary circumstances. Domestic Relations Rule 60(b). Cox v. Cox, 707 A.2d 1297, 1998 D.C. App. LEXIS 36 (1998).

Wife's motion to compel husband, following divorce, to deliver deeds to out-of-state parcels did not seek modification of divorce decree but only to implement portion of its mandate, and wife was not required to file motion within ten days after entry of decree. D.C. Code SCR, Dom.Rel.Rule 59(e). Quarles v. Quarles, 353 A.2d 285, 1976 D.C. App. LEXIS 493 (1976), writ of certiorari denied by 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290, 1976 U.S. LEXIS 3335 (1976).

#### **Nonresident spouse.**

Trial court, in action by wife for satisfaction of husband's obligation to support her under terms of property settlement agreement and absolute Maryland divorce judgment, did not abuse discretion in transferring nonresident husband's interest in property located in District of Columbia and held by parties as tenants by the entirety to former wife. D.C. Code §§ 11-1101, 16-910. Travis v. Benson, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

#### **Other property subject to distribution.**

Goodwill of professional practice acquired during marriage is "marital property" subject to valuation and distribution; to achieve equitable distribution of marital property, court must

consider contributions each spouse may have made to tangible and intangible assets of professional practice. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Spouse's inchoate personal injury claim, which arose after separation of parties but before divorce, was marital property subject to equitable distribution of court, despite its nonsettlement. D.C. Code 1981, §§ 16-910, 16-910(b). *Boyce v. Boyce*, 541 A.2d 614, 1988 D.C. App. LEXIS 84 (1988).

Husband's unenforceable expectation of inheriting his mother's house was not an "asset" or "opportunity for future acquisition of assets" that could justify award of marital home solely to wife incident to divorce, rejecting *James v. James*, 248 S.W.2d 706. D.C. Code 1981, § 16-910(b). *Gassaway v. Gassaway*, 489 A.2d 1073, 1985 D.C. App. LEXIS 349 (1985).

Trial court's disposition of stock in divorce proceeding, distributing equally 17 shares acquired prior to separation and awarding balance of stock to wife, who had obtained those additional shares through an employment purchase plan after separation but prior to divorce was proper; those additional shares were marital property and court's disposition to wife of shares acquired after separation was equitable, just and reasonable. D.C. Code 1981, §§ 16-910, 16-910(b). *Powell v. Powell*, 457 A.2d 391, 1983 D.C. App. LEXIS 323 (1983).

A \$1,000,000.00 judgment award, plus interest received by the defendant for personal injuries, was marital property, even though it was for personal injuries sustained by him after the parties had separated. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

If a substantial portion of the judgment award is for future loss of earnings, future pain and suffering and medical expenses to be incurred, and for permanent disability, and only a small portion thereof is compensation for past loss of earnings and medical expenses incurred during the marriage up to the time of the divorce, the trial court would have the discretion to award only a small portion thereof to the spouse of the injured party. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

### Partition.

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. D.C. Code 1951, §§ 11-758 to 11-770, 16-409. *Hogan v. Hogan*, 250 F.2d 412, 1957 U.S. App. LEXIS 4156 (C.A.D.C. 1957).

A court granting limited divorce for cruelty may in its discretion provide for partition or sale of property held by spouses by entireties. D.C. Code 1940, §§ 16-403, 16-409. *Tendrich v. Tendrich*, 193 F.2d 368, 1951 U.S. App. LEXIS 2903 (C.A.D.C. 1951).

Trial court, in partition action involving former family home awarded to the parties as tenants in common by divorce decree which created uncertainty as to its intended impact on the parties' right of partition of the family home, had power to determine whether decree itself, taken as a whole and considered in context of divorce proceedings, imposed limitations or conditions on parties' cotenancy right of partition. D.C. Code 1981, §§ 16-910, 16-2901. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Trial court, in granting divorce, had power to make provision that 75%-25% division of parties' interest in family home was subject to certain limitations and conditions which might affect either party's right of partition. D.C. Code 1981, §§ 16-910, 16-2901. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Even if North Carolina divorce judgment was an adjudication of faithful performance of marriage vows, former husband was not necessarily entitled to one-half share of proceeds of sale of partitioned house in light of statute giving trial court broad discretion in distributing property accumulated during marriage and since matter of disposition of marital property was not before the divorce court. D.C. Code 1981, § 16-910(b). *Hairston v. Hairston*, 454 A.2d 1369, 1983 D.C. App. LEXIS 284 (1983).

### Presumptions.

In order for court to withhold from marital distribution property held in name of one spouse, party who claims sole and separate ownership has burden of establishing that it is same property that he or she acquired prior to marriage; otherwise, property presumably was acquired during marriage and is subject to distribution. D.C. Code 1981, § 16-910(b). *Jordan v. Jordan*, 616 A.2d 1238, 1992 D.C. App. LEXIS 293 (1992).

Trial court properly distributed stock held in husband's name as marital property, in absence of evidence that any of stocks were purchased before marriage. D.C. Code 1981, § 16-910(b). *Jordan v. Jordan*, 616 A.2d 1238, 1992 D.C. App. LEXIS 293 (1992).

Wife in divorce action was presumptively entitled to beneficial interest in Maryland property which contained homestead of the parties where it appeared that wife had contributed \$400 to original purchase price of the property, even though deed was in name of husband only, and even though he was solely liable on the mortgage. *McGean v. McGean*, 339 A.2d 384, 1975 D.C. App. LEXIS 391 (1975).

### Property division.

Trial court was not required to address property issues in order to entertain divorce proceeding initiated by husband, where court



made no finding that it had personal jurisdiction over wife, who lived in Mississippi. *Davis v. Davis*, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

The trial court in a divorce proceeding must engage in a conscientious weighing of all relevant factors, statutory or otherwise, before reaching a conclusion about the proper distribution of marital property, and it is not limited to those factors enumerated in the equitable distribution statute. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Trial court is granted considerable discretion in distributing marital property to parties in a divorce action. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Trial court did not abuse its discretion in ordering that parties' equal sharing of ex-husband's severance payment was to be calculated after taxes were paid. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Trial court's order dividing marital property would be reversed, as court appeared to employ presumption of equal distribution and made inadequate findings that failed to consider specifically enumerated statutory factors and all other relevant factors, including husband's long history of absence from District, his adulterous relationships, his murder of his mistress, and parties' respective contributions to family unit. D.C. Code 1981, § 16-910(b). *Burwell v. Burwell*, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Grant of 25% interest in parties' marital home was proper; at least major portion of funds that were used to purchase marital home derived from separate property of husband, court took into account wife's nonfinancial contributions to farm that was sold to purchase disputed property, and court considered that some of wife's separate funds were used for marital expenses, and also considered parties' health, occupations, ages, and "positive and negative" nonfinancial contributions to marriage. D.C. Code 1981, § 16-910(b). *De Liedekerke v. De Liedekerke*, 635 A.2d 339, 1993 D.C. App. LEXIS 310 (1993).

When dividing marital property, trial court considered all relevant factors, including duration of marriage, former wife's contribution as homemaker, and that marital home came from former wife's father; trial court also considered that former wife left marriage and that at least one substantial factor having to do with ultimate break-up of her marriage was her drug use. D.C. Code 1981, § 16-910(b). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

Trial court did not abuse its discretion in dividing marital property in such a manner as to give husband one third and wife two thirds; parties' marriage lasted for more than 40 years, both parties contributed to the household by

working, wife made more money over the course of the marriage, wife did substantially all of the household work, including cooking, dishwashing, laundry, and cleaning for family which included eight children, and husband left home on at least two occasions and frequently spent nights out drinking, which ultimately led to alcoholism problem and incidents of violence toward his family. D.C. Code 1981, § 16-910. *Mosley v. Mosley*, 601 A.2d 599, 1992 D.C. App. LEXIS 7 (1992).

Former husband's equitable interest in house owned by former wife prior to marriage, which interest arose by husband making monthly mortgage payments on house, is calculated by determining reasonable value, as of date of divorce, of husband's contributions to property during marriage; trial court must then separately compute value of wife's interest in property at time of marriage, and value of equity in property acquired by both spouses during marriage; then must subdivide latter figure into wife's share and husband's share; and husband's equitable interest may not exceed, and may be less, than value of husband's contributions plus his proportionate share of appreciation in value of house during marriage. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Former husband's equitable interest in house owned by former wife prior to marriage, which interest arose when husband made mortgage payments on house, could be enforced by requiring wife to pay husband amount of his equitable interest immediately, and if wife sells house, she must satisfy lien before receiving any proceeds of sale. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Superior Court had jurisdiction to consider all medical costs incurred by wife during marriage in attempting to distribute marital property. D.C. Code 1981, § 16-910(b). *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

Trial court's finding that parties to divorce were in "reasonably good health," for purpose of determining property distribution, was not an abuse of discretion even though 60-year-old husband suffered from diabetes, high blood pressure and arthritis, and 67-year-old wife suffered from heart disease and high blood pressure, where such finding merely acknowledged that parties' health problems were not uncommon for persons of their age. *Gassaway v. Gassaway*, 489 A.2d 1073, 1985 D.C. App. LEXIS 349 (1985).

Court may consider spouse's nonmarital property in evaluating, under all circumstances, how much marital property should be awarded to other spouse incident to divorce. *Gassaway v. Gassaway*, 489 A.2d 1073, 1985 D.C. App. LEXIS 349 (1985).

Faithful performance of marriage vows may be considered in division of property in divorce action. D.C. Code 1981, § 16-910(b). *Hairston v. Hairston*, 454 A.2d 1369, 1983 D.C. App. LEXIS 284 (1983).

Mere fact that a property distribution clearly favors one of the parties to a divorce proceeding does not establish an abuse of discretion, since the issue is to be determined by an assessment of the totality of circumstances. *Murville v. Murville*, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

In divorce proceeding, distributing property in such manner as to clearly favor husband was not abuse of discretion, in light of fact that wife was employed full time and that husband was retired on a disability from federal government, was unable to work, was in poor health and in need of surgery in both eyes and he had been sole breadwinner during most of the marriage and had furnished sole consideration for purchase of spouses' home. D.C. Code 1978 Supp. § 16-910. *Murville v. Murville*, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

Regardless of whether spouses' house is titled in husband's name only, or held jointly, court has jurisdiction in a divorce proceeding to assign the entire interest in it to wife as part of the property distribution. D.C. Code 1978 Supp. § 16-910(b). *Murville v. Murville*, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

In distribution of property accumulated during marriage, trial court is obliged to consider amount each party contributed toward the property, but that element alone is not controlling; instead, court's decision is to be based upon an assessment of totality of the circumstances. D.C. Code § 16-910(b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

In distribution of property in action for divorce, court properly should focus on circumstances under which property was originally brought into marriage; exemption for sole and separate property acquired during marriage by gift, bequest, devise, or descent is not to be read to exclude from apportionment property which initially had come into marriage other than by those means. D.C. Code § 16-910(a, b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Determination of property division pursuant to divorce action should be determined on case-by-case basis, according to totality of circumstances. D.C. Code § 16-910. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Where jointly held property is at stake in divorce proceeding, financial contribution is not sole, or necessarily even determinative, criterion in resolving question of who is entitled to such property. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

In determining division of jointly held property, pursuant to divorce action, factors such as relative ability of parties to shelter themselves and their children adequately, and each party's contributions to maintenance of household, in addition to simple accounting of parties' respective monetary investment are all factors to be taken into account. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Wife's contribution to household expenses does not in itself provide adequate basis for awarding her a share in her husband's property. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Evidence, in actions for divorce and for accounting with respect to joint assets, that parties had agreed to share all expenditures and pool all resources and earnings, and share them equally, that both parties had been employed and had contributed to expenses of family living as well as expenses incident to home ownership, and that both parties received some money during marriage in addition to their earnings supported equal division of personal property in husband's name but provided no equitable or reasonable ground for dividing real property, held as joint tenants, on a different basis. D.C. Code § 16-910. *Lee v. Lee*, 290 A.2d 388, 1972 D.C. App. LEXIS 378 (1972).

Specific finding of constructive desertion was unwarranted and unnecessary to determination of equitable division of jointly owned real property in action by husband for absolute divorce on ground of voluntary separation, notwithstanding fact that wife had previously obtained limited divorce on ground of cruelty and allegedly had been forced to move from parties' home because of refusal of husband to do so. D.C. Code § 11-1141(a)(9). *Stanley v. Stanley*, 234 A.2d 810, 1967 D.C. App. LEXIS 204 (App. 1967).

Where it appeared that properties had been acquired through joint efforts of wife and husband, awarding wife a one-half interest of real and personal property upon divorce was not improper. *Smith v. Smith*, 210 A.2d 831, 1965 D.C. App. LEXIS 202 (App. 1965).

Notwithstanding lack of showing of direct financial contribution by wife seeking divorce on ground that husband had been convicted of felony involving moral turpitude, award to wife, who had assisted in operating business, of half interest of proceeds from sale of the property was result of exercise of sound discretion. D.C. Code 1961, §§ 16-403, 16-409. *Hunt v. Hunt*, 208 A.2d 731, 1965 D.C. App. LEXIS 178 (App. 1965).

Where land on which husband and wife built their marital home was given to husband alone by his parents but the couple together borrowed money to build the house, the jointly-held marital home is distributable marital property, but



the underlying land is exempt from marital distribution. *Browne v. Browne*, 112 WLR 613 (Super. Ct. 1984).

### Property interests.

Former wife, who may not have contributed to purchase price of marital property held by parties as tenants by the entirety, took an equal share in the property in consideration of faithful performance of her marriage vows and was entitled to her share on divorce. *Sebold v. Sebold*, 444 F.2d 864, 1971 U.S. App. LEXIS 11872 (C.A.D.C. 1971).

Mere contribution to maintenance of household does not create equitable interest in spouse. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Where jointly held property is involved, and evidence shows that husband contributed bulk, if not all, of funds for purchase thereof, wife's interest is deemed to be conditioned on her faithful performance of marriage vows. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Where property is held solely in name of one spouse, other spouse must make showing of legal or equitable interest therein to establish claim in divorce action. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

A wife's right to an adjudication of her rights in husband's property does not flow from her right to a divorce, but must be based upon a claim of title wholly independent of divorce and the concomitant award of permanent alimony, and, therefore, wife's action to assert her right in husband's property is distinct from and unrelated to her action for divorce, but such actions may be joined. Fed.Rules Civ.Proc. rule 18(a), 18 U.S.C. *Holcomb v. Holcomb*, 209 F.2d 794, 1954 U.S. App. LEXIS 3673 (C.A.D.C. 1954).

In absence of some right or element of ownership, legal or equitable, on part of wife in husband's property, court in divorce case is without power to order transfer of that property to her. *Keleher v. Keleher*, 192 F.2d 601, 1951 U.S. App. LEXIS 2762 (C.A.D.C. 1951).

Where wife from whom husband was granted divorce because of desertion had contributed only \$100 toward down payment on house, awarding house to husband and limiting wife to amount of her contribution was not abuse of discretion and did not deprive her of a property right in violation of Fifth Amendment. D.C. Code 1940, § 16-409; U.S. Const. Amend. 5.

*Slaughter v. Slaughter*, 171 F.2d 129, 1948 U.S. App. LEXIS 2792 (1948).

A spouse may not circumvent equitable distribution of marital estate by concealing marital assets or by manipulating title to them. *Cox v. Cox*, 639 A.2d 97, 1994 D.C. App. LEXIS 41 (1994).

Former husband's payment of monthly mortgage obligation on house owned by former wife before she was married created equitable interest in house, even though husband was not entitled to share in legal title of house. D.C. Code 1981, § 16-901 et seq. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Husband's equitable interest in house owned by former wife prior to marriage, which interest arose when husband made mortgage payments on house, was in nature of equitable lien; it encumbered property, but did not give husband any ownership or possessory interest. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Once determined, property rights stemming from property division in divorce proceeding are no different in their finality from any other creation or transfer of property rights. D.C. Code 1981, § 16-910. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Real property interests resulting from property division in divorce proceeding, like all other real property interests, ought to be as clear, fixed and settled as possible. D.C. Code 1981, § 16-910. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Wife's substantial and extensive contributions to husband's business without pay created in her an equitable interest in business which survived incorporation and was subject to distribution on divorce. D.C. Code 1978 Supp. §§ 16-910, 16-910(a, b). *Darling v. Darling*, 444 A.2d 20, 1982 D.C. App. LEXIS 316 (1982).

While wife made substantial furniture purchases during marriage, those purchases coupled with her other payments for home and family were not enough to establish an interest in marital home which husband had acquired prior to marriage and which was in husband's name; thus, wife proved neither antenuptial agreement nor equitable basis for establishing interest in house sufficient to remove it, as matter of law, from statutory category of sole and separate property of her husband. D.C. Code § 16-910(a). *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

Fact that husband wanted wife to use and enjoy marital home, which he acquired before marriage, during their marriage did not establish an intent to give her legally enforceable interest in marital home. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

Wife's performance of sporadic clerical services for husband for undetermined period when he was beginning his architectural practice in 1963 was insufficient contribution to justify award of one-half interest in property which was purchased by husband in 1965 and paid for by him over two succeeding years, particularly in view of award in divorce decree of marital abode to wife. *Mumma v. Mumma*, 280 A.2d 73, 1971 D.C. App. LEXIS 188 (1971).

A wife's claim to property held by her husband does not flow from her right to divorce, but is distinct and unrelated to her suit for divorce. *Posnick v. Posnick*, 160 A.2d 804, 1960 D.C. App. LEXIS 197 (Cr.App. 1960).

Wife was entitled to thirty-five percent of all commissions received by her husband from those agents who joined pyramidal sales hierarchy during the existence of the parties' marriage, and entitlement to those commissions would continue as long as commissions were received by the husband. *Robinson v. Robinson*, 124 WLR 1617 (Super. Ct. 1996).

#### **Remand.**

Remand for a decision to retain jurisdiction over husband's divorce action against non-resident wife or to dismiss the action on forum non conveniens grounds was required by possibility that the trial court dismissed the action only because of its error in thinking that it was required to adjudicate the parties' property rights if it exercised jurisdiction. *Davis v. Davis*, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

#### **Rental income.**

Trial court did not abuse its discretion in divorce action by not awarding wife a share of the rental income received during the marriage from residence which husband acquired prior to the parties' ceremonial marriage and which was titled in husband's name, where the rental income had been exhausted to make the mortgage payments on the residence, rental income covered less than half of the total amount that husband paid on mortgage, and there was very little rental income from the residence during the time that wife refused to vacate the residence and violated court order requiring her to either pay rent to husband or vacate the residence. *Bansda v. Wheeler* (In re Ekekwe), 995 A.2d 189, 2010 D.C. App. LEXIS 266 (2010).

#### **Retirement and pension benefits.**

Property settlement agreement did not result in waiver of ex-wife's right to share in ex-husband's retirement benefits under Foreign Service Act; settlement agreement made no express mention of rights under Act, and no waiver arose from language providing for settlement of "all property interests and all claims between or against each other," and for release and relinquishment of all rights that either

may have "in and to the property \_\_\_\_\_ of the other," as rights under Act were directly granted to ex-wife, and what Act required was that agreement "expressly provide" that statutory scheme not be controlling. *Angulo v. Gochnauer*, 772 A.2d 830, 2001 D.C. App. LEXIS 116 (2001).

Trial court, exercising its duty in a divorce action to distribute the marital property in equitable manner, had to distribute pension rights, which were marital property, even though one spouse had entirely dissipated the pension funds. D.C. Code 1981, § 16-910(b). *Herron v. Johnson*, 714 A.2d 783, 1998 D.C. App. LEXIS 125 (1998).

Pension rights, to the extent acquired during the marriage, are property subject to equitable distribution. D.C. Code 1981, § 16-910(b). *Herron v. Johnson*, 714 A.2d 783, 1998 D.C. App. LEXIS 125 (1998).

Award to husband in divorce action of share of wife's pension benefits properly included benefits accruing through date of divorce, rather than only those accruing through date of separation. *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Distribution of property in accordance with divorce statute may encompass pension rights acquired during course of marriage. *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Refusing to award husband share of wife's pension benefits was not abuse of discretion in divorce proceeding; decision was part of court's overall plan for distribution of marital property and was based on assessment of parties' respective abilities as of time of divorce to face demands of later years. D.C. Code 1981, §§ 16-910, 16-910(b). *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Application of statute, governing distribution of marital property upon entry of final decree of annulment or divorce, to provide pension recipient's former spouse with benefits which vested in recipient before enactment of the statute was valid means of mitigating economic hardships of divorce and did not deprive recipient of any property interests in his pension without due process of law. D.C. Code 1981, § 16-910(b); U.S. Const. Amend. 5. *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

Term "property," as used in statute governing distribution of property upon entry of final decree of annulment or divorce, includes such assets as pension rights. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

To extent that right to a pension was acquired during marriage, pension would be deemed "marital property" subject to distribution under statute governing distribution of property upon entry of final decree of annul-



ment or divorce, even though the pension rights were nonmatured. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

Fact that a particular pension is nonmatured should be a factor only with respect to valuation and apportionment of the assets upon distribution of property after entry of final decree of annulment or divorce, and should not be factor with respect to threshold determination as to whether the asset constitutes marital property. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

Dividing number of years of a marriage by the number of years of a spouse's employment creditable toward a pension is approved as method for determining how much of a spouse's pension benefits are attributable to employment during the years of the parties' marriage, though other means of arriving at a fair allocation of nonmatured assets might also be appropriate and fair in light of the circumstances presented in individual cases. D.C. Code 1981, § 16-910. *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

In divorce proceeding, trial court erroneously assumed spouse would retire at age 55 in calculating how much of that spouse's pension benefits were attributable to employment during years of the parties' marriage; spouse's pension should be shared by the parties in accordance with the formula utilized by the trial court not only if the spouse should retire at age 55, but also if he should retire at a later time. D.C. Code 1981, § 16-910. *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

In divorce proceeding, trial court did not err in awarding wife a portion of husband's pension benefits but refusing to award husband any portion of wife's pension benefits; trial court's allocation of the parties' marital property was properly based on an assessment of all the relevant circumstances. D.C. Code 1981, § 16-910(b). *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

It was not error to fail to consider former husband's retirement and pension benefits in distributing property where former wife's attorney urged at trial only that former husband's pension rights be considered in disposing of real property acquired by parties during marriage, former husband's counterclaim requested only division of "personal property accumulated by the parties during their marriage," and parties represented to trial court that they would divide their personal property themselves. *Hackes v. Hackes*, 446 A.2d 396, 1982 D.C. App. LEXIS 372 (1982).

It was not error for divorce court to deny former wife a share of husband's foreign service annuity as her separate property. Foreign Ser-

vice Act of 1946, § 821(b)(1, 2) as amended 22 U.S.C. § 1076(b)(1, 2). *Finch v. Finch*, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

### **Retroactive application.**

To extent that statute governing distribution of marital property upon entry of final decree of annulment or divorce could be regarded as having operated retroactively against former husband in awarding his former wife a portion of his pension benefits which had vested in him prior to effective date of the statute, the statute did not impair the parties' obligations under their marriage contract. D.C. Code 1981, § 16-910(b); U.S. Const. Art. 1, § 10, cl. 1. *Barbour v. Barbour*, 464 A.2d 915, 1983 D.C. App. LEXIS 429 (1983).

### **Review.**

Award to divorced husband of all District of Columbia property which had been held by parties during coverture as tenants by the entirety and which had not been disposed of by Maryland divorce decree was compatible with disposition which could have been made in a suit for partition and, although not specifically asked for, such relief could have been granted in husband's action seeking to have title to such property placed in his name; thus, reviewing court was justified in treating appeal as one from a lower court decree partitioning real property and such treatment disposed of any jurisdictional question whether district court could have awarded any remedy other than partition. D.C. Code §§ 16-910, 16-2901. *Sebold v. Sebold*, 444 F.2d 864, 1971 U.S. App. LEXIS 11872 (C.A.D.C. 1971).

Though the trial court stated that it considered statutory factors when dividing marital property, this conclusory statement did not provide appellate court a way of assessing whether trial court's decision was supported by the record; without a more detailed analysis, appellate court could not ascertain whether the trial court properly exercised its considerable discretion and broad authority, and thus case would be remanded for further findings as to the division of property. *Young-Jones v. Bell*, 905 A.2d 275, 2006 D.C. App. LEXIS 487 (2006), remanded by 967 A.2d 1262, 2009 D.C. App. LEXIS 51 (D.C. 2009).

The trial court is charged by statute with distributing marital property in an equitable manner, and so long as that court considers all relevant factors, its conclusions will not be disturbed on appeal. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

If the trial court's findings of fact, conclusions of law and judgment, taken together, present an integrated, internally consistent and readily understood whole, its decision on the distribution of marital property will be allowed to stand

on appeal. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Trial court abused its discretion when distributing marital property in divorce action by not taking into account parties' equity in marital home and non-marital settlement proceeds of wrongful death and survival actions arising out of death of wife's child by prior union. D.C. Code 1981, § 16-910(b). *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

Court of Appeals will reverse divorce decree ordering distribution of marital property if inadequate findings on material issues preclude meaningful appellate review by not presenting integrated, internally consistent, and readily understood whole. D.C. Code 1981, § 16-910(b). *Burwell v. Burwell*, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Divorce proceeding would be remanded for more detailed trial court analysis of facts in conjunction with applicable law of property, focusing especially on donors' intent, so as to allow for determination of whether proceeds of sale of couple's house, which had been donated by husband's parents as "wedding gift" prior to wedding which was cancelled six years prior to marriage, were distributable as marital property. D.C. Code 1981, §§ 16-910(a, b), 45-210, 45-211, 45-212, 45-301. *Singer v. Singer*, 636 A.2d 422, 1994 D.C. App. LEXIS 3 (1994).

Where trial judge had considered all relevant factors, not just fact that all funds used for purchase, upkeep and improvement of home, which had been placed in name of both parties as tenants by entirety, were exclusively those of husband, order that husband was entitled to sole ownership of home was within discretion of trial court and would not be disturbed on appeal. D.C. Code § 16-910. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

#### **Savings accounts.**

Evidence in divorce action supported trial court's finding that wife made substantial monthly contributions from her earnings to her husband's savings account over period of several years. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Award to wife of \$7,500 from savings account in husband's name was not clearly erroneous in view of evidence that wife had made substantial monthly contributions from her earnings to the savings account over period of several years. Act of Sept. 9, 1959, 73 Stat. 473; D.C. Code § 11-1101(8). *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

#### **Separate property.**

Trial court did not abuse its discretion in divorce action by assigning to husband residence which husband acquired prior to the parties' ceremonial marriage and which was

titled in husband's name, as the residence was husband's separate property, wife was an educated person with experience in the television industry and in business, and wife did not show that she was unable to obtain housing on her own. *Bandsa v. Wheeler* (In re Ekekwe), 995 A.2d 189, 2010 D.C. App. LEXIS 266 (2010).

Proceeds of settlement of actions arising out of death of wife's child by prior union were her sole and separate property and, thus, were not subject to equitable distribution between wife and her husband, who was not child's father, upon divorce; in light of their intended beneficiaries and manner of distribution, proceeds of both survival and wrongful death actions had characteristics similar, if not identical, to sole and separate property acquired during marriage by gift or descent that is exempted from distribution as marital property. D.C. Code 1981, § 16-910(a). *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

Husband's interest in partnership retained its character as "separate gifted property," and not "marital property" subject to equitable distribution, as neither spouse contributed to increase in value of partnership or income generated by it. D.C. Code 1981, § 16-910(a). *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Belgian husband and wife's marital home in District of Columbia (D.C.) was subject to division under Code, and was not husband's separate property within terms of premarital agreement; agreement was, at best, ambiguous about parties' intent with respect to separate property that became jointly titled and in which, moreover, individual owner appeared to intend to give other spouse some interest, and home was placed into tenancy by entirety ownership form. D.C. Code 1981, § 16-910(b). *De Liedekerke v. De Liedekerke*, 635 A.2d 339, 1993 D.C. App. LEXIS 310 (1993).

Portion of condominium's value representing joint income used by parties during marriage to pay down mortgage was not marital property, but rather was equitable lien in favor of wife, where condominium had been purchased by husband prior to marriage and was his separate property. *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Wife was not entitled to equitable interest in marital home where husband had acquired marital home several years prior to marriage, during marriage husband paid off trusts on home and paid real estate taxes with money from various investment accounts that husband had opened prior to marriage, wife's non-monetary contributions to maintenance of marital home were quite modest, and wife made no financial contribution to acquisition or maintenance of home. *Ealey v. Ealey*, 596 A.2d 43, 1991 D.C. App. LEXIS 209 (1991).



Sole and separate property, as defined under Code, is subject to being encumbered by equitable lien in favor of nonpurchasing spouse upon finding by trial judge that nonpurchasing spouse has made substantial contribution to acquisition or increase in value of property during marriage. D.C. Code 1981, § 16-910(a). *Ealey v. Ealey*, 596 A.2d 43, 1991 D.C. App. LEXIS 209 (1991).

In divorce action in which wife was awarded interest in 40 estimated quarterly payments of husband's partnership, distribution which was not in existence at time of trial and of which court was not aware, was separate property which court retained jurisdiction to distribute; thus, husband's appeal of initial judgment did not nullify court's subsequent written order awarding wife 50% of distribution in question. D.C. Code 1981, § 16-910(b). *Tydings v. Tydings*, 567 A.2d 886, 1989 D.C. App. LEXIS 256 (1989).

Act of former husband in signing mortgage note to house owned by former wife prior to marriage was insufficient to convert house from wife's separate property into marital property, where title to property was never transferred into joint tenancy or tenancy by the entireties. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Trial court could not award former husband 50% interest in legal title of house owned by former wife before she was married, as statute stated that property acquired prior to marriage was sole and separate property of spouse who originally owned it and must be assigned to that spouse upon divorce. D.C. Code 1981, § 16-910(a). *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

In divorce case, court's distribution of antiques was not improper on basis that they were sole and separate property of husband acquired before marriage, property acquired in exchange therefor or assets of corporation owned by husband, where business and personal assets were commingled extensively so that use of business funds to purchase property was not dispositive of issue of ownership and parties used antiques in their home for lengthy periods and owned little other furniture. D.C. Code 1978 Supp. §§ 16-910, 16-910(a, b). *Darling v. Darling*, 444 A.2d 20, 1982 D.C. App. LEXIS 316 (1982).

In action for divorce, threshold requirement for exception of property from distribution by discretion of trial court is that property be "sole and separate" property of one spouse; if and when property is put in joint names, for whatever reason, then it is no longer exempted. D.C. Code § 16-910(a, b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

In action for divorce, trial court is authorized to apportion property and trace funds only in its distribution of property accumulated during

marriage, and not in its assignment to each party of his or her sole and separate property. D.C. Code § 16-910(a, b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Property purchased by married couple as tenants by the entirety with title subsequently transferred to wife as sole owner was not exempt from distribution in divorce proceedings because it was her sole and separate property acquired during marriage by gift. D.C. Code § 16-910(a, b). *Turpin v. Turpin*, 403 A.2d 1144, 1979 D.C. App. LEXIS 411 (1979).

Neither statute which empowers the domestic relations branch of the superior court to apportion, upon entry of final decree of divorce, property which is jointly owned by the spouses, nor statute giving the court broad discretion to award alimony and continue a wife's dower interest, empowers the court to grant to wife any interest in property solely owned by husband. D.C. Code §§ 16-910, 16-912. *McGean v. McGean*, 339 A.2d 384, 1975 D.C. App. LEXIS 391 (1975).

In order to justify award of property held solely in the name of one spouse it is necessary that the other spouse make showing of legal or equitable interest therein. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Property held solely in name of husband entitled to divorce on ground of a desertion was not subject to division by the court. D.C. Code 1961, § 16-910. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

Divorce court properly awarded to husband, entitled to divorce on ground of desertion, property which was purchased without contribution of wife. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

### Separation.

Record disclosed that legally separated wife had consented to determination of her interest in real and personal property. *Mitchell v. Mitchell*, 194 A.2d 828, 1963 D.C. App. LEXIS 309 (App. 1963).

### Tax matters.

Trial court's failure to mention husband's individual tax liability of \$50,000, in distribution of marital property award finding husband liable for 92% of marital credit card debt totaling \$30,599 and joint tax debt totaling \$15,453, required that award be vacated and remanded to trial judge to consider matter expressly, explaining how he arrived at award. D.C. Code 1981, § 16-910(b). *Bernard v. Bernard*, 730 A.2d 663, 1999 D.C. App. LEXIS 126 (1999).

A court dividing property of parties in a divorce proceeding is not at liberty to alter basic precepts of federal or of state tax law. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1; 26 U.S.C. §§ 1 et seq., 6012(a)(1)(A)(iii), 6013, 6013(a). *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Even if a court distributing property of parties in a divorce proceeding was at liberty to alter basic concepts of the tax laws, a trial court, by effectively ordering a wife to join in filing joint returns with the husband, and without apparent regard to any equally effective alternative legal disposition, would act erroneously by opting for equitable relief likely to stifle the wife's nascent efforts to manage her fiscal affairs apart from the husband. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1; 26 U.S.C. §§ 1 et seq., 6012(a)(1)(A)(iii), 6013, 6013(a). *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

It is not error to evaluate the relative tax positions of the parties in distributing property in a divorce proceeding. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Portion of order conditioning wife's receipt of her share of marital property upon her filing an amended joint federal income tax return with husband for two years of their marriage, being unquestionably coercive, was erroneous as exceeding both the mandates of the Internal Revenue Code governing joint returns and bounds of trial court's equitable powers. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1; 26 U.S.C. §§ 1 et seq., 6012(a)(1)(A)(iii), 6013, 6013(a). *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Propriety of considering tax matters in divorce proceeding does not serve as a license for the trial court to compel a party to execute a joint return. D.C. Code 1981, §§ 11-1101(8), 16-910; Domestic Relations Rule 1. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

### Tenancies.

Fact that Congress retained tenancies by entirety for District of Columbia indicates preference for marital community interest over competing interests of creditors. D.C. Code § 16-910. *Benson v. United States*, 442 F.2d 1221, 1971 U.S. App. LEXIS 11342 (C.A.D.C. 1971).

Statute permitting continuance of tenancy by entirety after divorce does not apply to property newly acquired by divorced parties. D.C. Code § 16-910. *Benson v. United States*, 442 F.2d

1221, 1971 U.S. App. LEXIS 11342 (C.A.D.C. 1971).

Husband and wife can retain incidents of tenancy by entirety or joint tenancy after their marriage is dissolved if they so agree. D.C. Code 1961, § 16-910. *Hardy v. Hardy*, 250 F. Supp. 956, 1966 U.S. Dist. LEXIS 9735 (D.D.C.1966).

Under District of Columbia law, title to entireties property vests immediately after divorce in the proper parties and there is no need for interim allocation of interests as tenants in common. D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Under District of Columbia law, upon divorce, entireties property's ownership is determined by divorced spouses' pre-divorce agreement, or by court in absence of such agreement, and so divorce effects transformation of ownership without necessity of an actual deed. D.C. Code 1981, § 16-910. *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Entire equity in home was subject to distribution as marital property even though husband held legal title in joint tenancy with his mother and mother remained liable on promissory note secured by first deed of trust, where parties' intent in putting mother's name on title was solely to benefit spouses in obtaining financing, mother had been compensated for contribution to purchase home, value of home exceeded potential liability on note, and mother had been made party to the divorce action and had opportunity to assert her rights. D.C. Code 1981, § 16-910(b). *Gore v. Gore*, 638 A.2d 672, 1994 D.C. App. LEXIS 25 (1994).

Tenancy by entirety precluded any other transfer or conveyance of property by wife other than as specified in statute relating to divorce, and hence effect could not be given to will of deceased spouse, under which property would go to her daughters. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

Real property held by husband and wife as tenants by entirety passed to surviving spouse when no final divorce decree had entered even though prior to deceased spouse's death, surviving spouse abandoned marital abode, deceased spouse filed complaint for absolute divorce, and surviving spouse filed answer which requested court to adjudicate property rights of parties. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

In action for divorce, trial court did not abuse its discretion in its distribution of marital property which awarded to each spouse sole ownership of one of two virtually identical houses purchased by the parties during their marriage, notwithstanding that the house awarded



to the wife had originally been held by the spouses as tenants by the entirety with title subsequently transferred to the wife. D.C. Code § 16-910(a, b). *Hemily v. Hemily*, 403 A.2d 1139, 1979 D.C. App. LEXIS 410 (1979).

In absence of agreement between husband and wife, entry of final divorce decree dissolves tenancy by the entirety and converts it into a tenancy in common whereupon court is authorized to apportion property among parties to divorce as it sees fit. D.C. Code § 16-910. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

Provision for apportionment of property subject to tenancy by entirety dissolved by final entry of divorce applies only to property in which tenancy by entirety is dissolved by operation of statute and does not affect general equitable power of court to adjudicate dispute between parties concerning their respective rights in property acquired by them during marriage. D.C. Code § 16-910. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

Only jointly held property may be apportioned pursuant to statute providing for dissolution of joint tenancy or tenancy by the entirety upon final decree of absolute divorce. D.C. Code § 16-910. *Mumma v. Mumma*, 280 A.2d 73, 1971 D.C. App. LEXIS 188 (1971).

Statute providing for dissolution of joint tenancy or tenancy by entirety upon final decree of absolute divorce and authorizing court apportionment in such manner as seems equitable, just and reasonable vests trial judge with considerable discretion and does not require fiscal equality. D.C. Code § 16-910. *Mumma v. Mumma*, 280 A.2d 73, 1971 D.C. App. LEXIS 188 (1971).

#### **Title to property.**

The nature of the title on marital property does not remove the property, or proceeds derived from its sale, from the scope of equitable distribution. *Young-Jones v. Bell*, 967 A.2d 1262, 2009 D.C. App. LEXIS 51 (2009).

#### **Valuation of property.**

Passage of nearly nine months from the date on which trial court assigned value to marital residence and the date on which trial court entered judgment of divorce rendered the valuation stale such that trial court should have reconsidered the valuation for purposes of maintaining an equitable distribution of marital property; housing market was collapsing at the time of proceedings. *Murphy v. Murphy*, 46 A.3d 1093, 2011 D.C. App. LEXIS 794 (2012).

Trial court, as the arbiter of the credibility of witnesses, could reasonably reject wife's nonexpert valuation of newspaper business that husband established shortly after separation, which was a marital asset subject to equitable

distribution at divorce, where wife provided no objective basis on which she capitalized gross revenue as a multiple of two, or five times net earnings, to arrive at her valuation. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Although exactitude in the valuation of a close corporation as marital property is not possible in a divorce action, and notwithstanding the trial court's considerable discretion in choosing a valuation method, the method it chooses must allow the trial court to arrive at a distribution of marital property that, based on the evidence, is equitable, just and reasonable. *Barnes v. Sherman*, 758 A.2d 936, 2000 D.C. App. LEXIS 199 (2000).

Trial court abused its discretion in refusing to revalue marital residence in distributing property, where period of 18 months had elapsed from time of trial, and uncontroverted proffer was made that residence had increased in value from \$320,000 to \$565,000; ignoring most current value of marital home and distributing that property according to stale valuation rendered distribution scheme irresponsive to parties then current needs and financial circumstances. D.C. Code 1981, § 16-910. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Although goodwill of professional practice acquired during marriage is marital property subject to valuation and distribution, under facts of given case, professional practice may have no goodwill value, and case-by-case inquiry into valuation is preferred. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

There are wide variety of acceptable methods of valuing goodwill of professional practice for purposes of property distribution in divorce action, and no single method is to be preferred as matter of law. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Selection of method of valuing goodwill of professional practice is within discretion of trial judge in divorce action, though method must be reasonable, sound and supported by evidence. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

Husband's interest in his law firm's goodwill should have been given no value in light of express terms of partnership agreement making goodwill nonsalable, and absence of any other factors making goodwill valuable and, consequently, trial judge erred in valuing goodwill of husband's partnership interest at \$63,824. *McDiarmid v. McDiarmid*, 649 A.2d 810, 1994 D.C. App. LEXIS 191 (1994).

It was error for court which stated that it was dividing property so that husband would get one third and wife would get two thirds to also order the husband to reimburse the wife for her expenses on one piece of property without de-

termining the amount of those expenses; result might be inconsistent with the trial court's conclusions on the two to one split between the parties and conclusion that distribution of retirement benefits would leave husband with enough future income to maintain a fairly comfortable standard of living. *Mosley v. Mosley*, 601 A.2d 599, 1992 D.C. App. LEXIS 7 (1992).

Any determination of value of husband's equitable interest in house owned by former wife prior to marriage, which interest arose by husband making mortgage payments on house, had to take into account fact that husband was still jointly indebted, along with wife, on mortgage note. *Yeldell v. Yeldell*, 551 A.2d 832, 1988 D.C. App. LEXIS 227 (1988).

Superior Court erred in awarding husband \$10,000 in equity in marital home without

determining amount of equity in marital home at time of trial, value of parties' contributions to home, and respective liabilities for home improvement loan, and in failing to determine amount of equity due husband by considering all of parties' marital property. D.C. Code 1981, § 16-910. *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

In calculating amount due each party on division of property, trial court should have considered question of whether wife, who was awarded amount she had contributed for down payment on marital house was entitled to proportional amount of appreciation of house which sold for sum substantially higher than couple's purchase price. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

## § 16-911. Pendente lite relief.

(a) During the pendency of an action for divorce, the termination of a domestic partnership pursuant to § 32-702(d), where one of the domestic partners has filed a petition for relief available under this section, or an action by a spouse to declare the marriage null and void, where the nullity is denied by the other spouse, the court may:

(1) require the spouse or domestic partner to pay pendente lite alimony to the other spouse or domestic partner; require one party to pay pendente lite child support, including health insurance coverage, cash medical support, or both, for his or her minor children committed to another party's care; and require the spouse or domestic partner to pay suit money, including counsel fees, to enable such other spouse to conduct the case. The Court may enforce any such order by attachment, garnishment, or imprisonment for disobedience, and all support orders shall be enforceable by withholding as provided in § 46-207 and § 46-251.07. In determining pendente lite alimony for a spouse or domestic partner, the Court shall consider the factors set forth in § 16-913(d) and may make an award of pendente lite alimony retroactive to the date of the filing of the pleading that requests alimony.

(2) enjoin any disposition of a spouse's or domestic partner's property to avoid the collection of the allowances so required;

(3) if a spouse or domestic partner fails or refuses to pay the alimony or suit money, sequester his or her property and apply the income thereof to such objects;

(4) if a party under court order to make payments under this section is in arrears, order the party to make an assignment of part of his or her salary, wages, earnings or other income to the person entitled to receive the payments; and

(5) determine, in accordance with section 16-914, the care and custody of a minor child or children pending final determination of those issues.

(a-1) Repealed.

(a-2) Repealed.

(b) The attachment, garnishment, or assignment under paragraphs (1) and (4) of subsection (a) is binding on the employer, trustee, or other payor of



salary, wages, earnings, or other income. No employer shall discharge or otherwise discipline an employee because of such attachment, garnishment, or assignment.

(c) The court may order, at any time, that maintenance or support payments be made to the Collection and Disbursement Unit, as defined in section 46-201(2A) [now § 46-201(3)], for remittance to the person entitled to receive the payments, and shall order that such payments be made to the Collection and Disbursement Unit when the Collection and Disbursement Unit is responsible for collecting and disbursing these payments under section 46-202.01.

(d) The Court may order any other appropriate pendente lite relief.

(Dec. 23, 1963, 77 Stat. 561, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 14, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 108, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(a), 41 DCR 4870; May 16, 1995, D.C. Law 10-255, § 14(b), 41 DCR 5193; Apr. 18, 1996, D.C. Law 11-110, § 24(b), 43 DCR 530; Apr. 18, 1996, D.C. Law 11-112, § 2(a), 43 DCR 574; Apr. 9, 1997, D.C. Law 11-255, § 18(d), 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-241, § 10, 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 142(a), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-207, § 2(f), 49 DCR 7827; Dec. 7, 2004, D.C. Law 15-205, § 3402, 51 DCR 8441; Apr. 4, 2006, D.C. Law 16-79, § 4(e), 53 DCR 1035; May 12, 2006, D.C. Law 16-100, § 2(f), 53 DCR 1886; Mar. 2, 2007, D.C. Law 16-191, § 131(b), 53 DCR 6794; Mar. 20, 2008, D.C. Law 17-128, § 2(b), 55 DCR 1525; Sept. 12, 2008, D.C. Law 17-231, § 20(c), 55 DCR 6758.)

**Cross references.** — Child support enforcement, attachment or garnishment of wages of District of Columbia employees, see § 1-507.

**Prior Codifications.** — 1981 Ed., § 16-911. 1973 Ed., § 16-911.

**Effect of amendments.** — D.C. Law 13-91, in subpar. (a)(5)(O), substituted “or Program on Work” for “Program on Work”.

D.C. Law 14-207, in the section heading, substituted “Pendente lite relief.” for “Alimony pendente lite; suit money; enforcement; custody of children.”; in subsec. (a), rewrote pars. (1) and (5); repealed subsecs. (a-1) and (a-2); rewrote subsec. (c); and added subsec. (d).

D.C. Law 15-205 rewrote subsec. (c) which had read as follows: “(c) The Court may order, at any time, that maintenance or support payments be made to the clerk of the court for remittance to the person entitled to receive the payments, and shall order that such payments be made to the clerk of the court when required to implement withholding under section 46-207.”

D.C. Law 16-79, in par. (a)(1)(A), substituted “spouse or domestic partner” for “husband or wife”; in par. (a)(1)(B), substituted “spouse or domestic partner” for “spouse”; in par. (a)(2), substituted “spouse or domestic partner’s” for “spouse’s”; in par. (a)(3), substituted “spouse or domestic partner” for “spouse”; and rewrote the

lead-in language to subsec. (a), which had read as follows: “(a) During the pendency of an action for divorce, or an action by the husband or wife to declare the marriage null and void, where the nullity is denied by the other spouse, the court may:”

D.C. Law 16-100, in par. (a)(1), substituted “and all support orders shall be enforceable by withholding as provide in section 46-207” for “and shall enforce support orders through withholding as required under section 46-207”.

D.C. Law 16-191, in subsec. (a), inserted “available” following “relief” in the introductory language, and substituted “spouse’s or domestic partner’s” for “spouse or domestic partner’s” in par. (2).

D.C. Law 17-128 rewrote subsec. (a)(1), which had read as follows: “(1) require the spouse or domestic partner to pay pendente lite alimony to the other spouse or domestic partner; require one party to pay pendente lite child support for his or her minor children committed to another party’s care; and require the spouse or domestic partner to pay suit money, including counsel fees, to enable such other spouse or domestic partner to conduct the case. The Court may enforce any such order by attachment, garnishment, or imprisonment for disobedience, and all support orders shall be enforceable by withholding as provide in section

46-207. In determining pendente lite alimony for a spouse or domestic partner, the Court shall consider the factors set forth in section 16-913(d) and may make an award of pendente lite alimony retroactive to the date of the filing of the pleading that requests alimony."

D.C. Law 17-231, in subsec. (a), substituted "§ 32-702(d)" for "§ 32-702".

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 10 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 105(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 2(f) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 5(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(g) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(g) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(g) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(g) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 10 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 10 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 10 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), § 10 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary amendment of section, see § 105(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(g) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(g) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 3402 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3402 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2(f) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(f) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).



**Legislative history of Law 1-87.** — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law, The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 10-154.** — Law 10-154, the “Evidence of Intrafamily Offenses in Child Custody Cases Act of 1994,” was introduced in Council and assigned Bill No. 10-7, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-270 and transmitted to both Houses of Congress for its review. D.C. Law 10-154 became effective on August 25, 1994.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 11-110.** — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 11-112.** — For legislative history of D.C. Law 11-112, see Historical and Statutory Notes following § 16-916.03.

**Legislative history of Law 11-255.** — For legislative history of D.C. Law 11-255, see His-

torical and Statutory Notes following § 16-909.01.

**Legislative history of Law 12-241.** — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 16-901.

**Legislative history of Law 13-91.** — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Legislative history of Law 15-205.** — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004,” was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

**Legislative history of Law 17-128.** — For Law 17-128, see notes following § 16-901.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

**Short title.** — Short title of subtitle D of title III of Law 15-205: Section 3401 of D.C. Law 15-205 provided that subtitle D of title III of the act may be cited as the Child Support Transfer of Functions Amendment Act of 2004.

## CASE NOTES

### ANALYSIS

Attorney fees.

Child custody and support.

Children-out-of-wedlock.

Enforcement.

Evidence.

In general.

Litigation costs.

Modification.

Presumptions.

Review.

Temporary alimony.

### Attorney fees.

The trial court may in its discretion award counsel fees to wife regardless of the outcome of her divorce suit, and right of wife's attorney to fees is not vitiated by wife's wrongful conduct. D.C. Code 1940, §§ 16-410, 16-1904. *Shima v. Shima*, 139 F.2d 533, 1943 U.S. App. LEXIS 2341 (1943).

In the absence of statutory or rule authority, attorney fees generally are not allowed as an element of damages, costs, or otherwise; however, this general presumption may be altered where, as in domestic cases, statutory author-

ity expressly articulates otherwise. *Murphy v. Murphy*, 46 A.3d 1093, 2011 D.C. App. LEXIS 794 (2012).

Although a spouse's failure to cooperate—and whether that spouse made litigation burdensome and oppressive—may be considered in determining whether to award attorney fees as suit money in a divorce proceeding, such a consideration may be made only after a finding that the party requesting fees needs suit money to carry on the divorce litigation. *McClintic v. McClintic*, 39 A.3d 1274, 2012 D.C. App. LEXIS 133 (2012).

Statutory grant of authority to the trial court under statute governing attorney fee awards in divorce actions is designed to ensure that a party in a divorce action not be hindered unfairly in maintaining the action by unequal burdens between the spouses. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Husband was not entitled to attorney fee award in the amount of \$1,800 for costs he incurred in defending against divorce action initiated by wife in another state; statute governing attorney fee awards in actions for divorce did not confer authority upon trial court to award husband attorney fees incurred in an action separate from the divorce action instituted in the Superior Court. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Even assuming that a trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, former husband was not entitled to attorney fees for successfully defending against former wife's motion to modify child custody, where former husband made no showing that his ability to care for the children was impaired by the cost of defending against former wife's motion. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Assuming that the trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, the exercise of such authority would be committed to the trial court's discretion. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Former husband was not entitled to award of attorney fees, pursuant to separation and property settlement agreement providing for fee-shifting in favor of a party who successfully brought an action to enforce or implement the terms of the agreement, though trial court denied former wife's motion to modify a child custody order and former husband had brought a counterclaim alleging former wife had not shown grounds for modification and that former wife had interfered with former husband's custodial rights; the trial court did not find that former wife had interfered with former hus-

band's custodial rights, the relief the trial court ordered was no different than if former husband had successfully defended against custody modification but had filed no counterclaim, the fee-shifting provision did not apply to defense of claims, and former husband's counterclaim could not be construed as an action to enforce or implement the agreement. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Trial court's authority to award counsel fees during pendency of action for divorce did not allow it to award counsel fees in connection with postdivorce efforts to enforce parties' agreements. D.C. Code 1981, § 16-911(a)(1). *Fullard v. Fullard*, 614 A.2d 515, 1992 D.C. App. LEXIS 239 (1992).

Evidence in divorce proceeding supported award to wife of \$7,500 in attorney's fees; evidence indicated that wife incurred approximately \$17,500 in legal fees, and husband did not contend before trial court that amount of fees was unreasonable. D.C. Code 1981, § 16-911(a)(1). *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Ex-husband who withheld support payments after ex-wife threatened to remove children from their private school was not entitled to attorney fees on ground that wife's subsequent suit to recover support payments was brought in bad faith; by withholding support payments legitimately due to ex-wife, ex-husband placed her in position where litigation was not unreasonable. *King v. King*, 579 A.2d 659, 1990 D.C. App. LEXIS 194 (1990).

In divorce proceeding, court properly ordered husband to pay wife \$154,872, or approximately two thirds of attorney fees, expert witness fees, and costs incurred in her defense, less credit of \$50,000 for sums paid pendente lite, even though, as result of property distribution, wife received somewhat more than \$1.5 million. D.C. Code 1981, § 16-911(a)(1). *Tydings v. Tydings*, 567 A.2d 886, 1989 D.C. App. LEXIS 256 (1989).

Court should consider whether litigation has been oppressive or burdensome to party seeking award of attorney fees in divorce action and should consider motivation and behavior of litigating parties only in coming to a determination of whether any award should be made; once the threshold is crossed, those factors play no role in deciding the amount of the fee to be awarded. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Wife's possible entitlement to attorney fees or costs on contention that she was prevailing party as to child custody, support and alimony warranted remand for appropriate consideration and entry of findings. D.C. Code 1981, §§ 16-911(a)(1), 16-916(a). *Williams v. Williams*, 495 A.2d 754, 1985 D.C. App. LEXIS 430 (1985).



Factors to be considered in determining award of attorney fees to appointed counsel in domestic relations case include: necessity for services of attorney, quality and nature of work performed, financial ability of party ordered to pay, and fault of the nonaggrieved party. D.C. Code 1981, §§ 16-911(a)(1), 16-914(a), 16-916, 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Proper factors for trial court to weigh in determining amount of attorney fees to award in divorce proceeding include quality of services rendered, skills of counsel, result of litigation, difficulty of case, ability to pay attorney fees, and respective earning capacities of parties. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

In determining attorney fees to be awarded in divorce proceeding, to add to the calculus any factors such as motivation of either party in pursuing the litigation creates risk of turning award of attorney fees into punitive damages, which are beyond power of divorce court to grant. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

In divorce proceeding, wife's request for attorney fees in prior appeal should have been presented to Court of Appeals, which would have been in best position to determine value of counsel's services on such appeal; trial court should ordinarily defer to Court of Appeals. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Court's order granting attorney's fees to wife in action to enforce consent order, entered under the Uniform Reciprocal Enforcement of Support Act, for alimony and child support was not abuse of discretion even though writ of attachment had been quashed, in light of findings that legal services were warranted, wife's action was necessitated by husband's failure to pay support in accordance with court order, and husband was able to pay the attorney's fee and costs, as the amount of the award was within permissible limits. D.C. Code 1981, § 30-301 et seq. *Padgett v. Padgett*, 478 A.2d 1098, 1984 D.C. App. LEXIS 438 (1984).

In action brought by divorced wife's counsel seeking award of additional attorney fees arising out of his efforts on behalf of divorced wife to collect on earlier judgments against divorced husband, trial court did not err in awarding \$3,850 in additional attorney fees, since court carefully considered all necessary factors in determining amount of award, and court did not merely rubber-stamp bill submitted by divorced wife's counsel, but refused to award almost one third of the amount requested. *Smith v. Smith*, 445 A.2d 666, 1982 D.C. App. LEXIS 361 (1982), writ of certiorari denied by 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968, 1983 U.S. LEXIS 2990, 51 U.S.L.W. 3509 (1983).

Generally, award of attorney fees, like the award of alimony, is committed to the sound discretion of the trial court and will not be disturbed on appeal unless such discretion is abused. *Finch v. Finch*, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

Award of \$200 more in attorney's fees than was requested by attorney of former wife who was seeking increase in child support payments constituted abuse of discretion; such award seemed to include improper punitive element along with proper measure of reimbursement. D.C. Code § 16-911. *Wood v. Wood*, 360 A.2d 488, 1976 D.C. App. LEXIS 321 (1976).

Where divorced wife was 81 years of age, her income was \$131 a month and, in order to meet her current living expenses, she had to borrow money from her son, so that if she were required to pay her counsel fees, her action to enforce court agreement requiring former husband to pay her \$150 a week would hardly be worth the effort, award of counsel fees was not improper. *Marlowe v. Marlowe*, 310 A.2d 59, 1973 D.C. App. LEXIS 361 (1973).

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. D.C. Code § 16-911(1). *Grasty v. Grasty*, 302 A.2d 218, 1973 D.C. App. LEXIS 253 (1973).

Amount of counsel fees to award to wife in divorce case is matter which is within sound discretion of the trial court. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Where divorced wife was forced to litigate to compel husband to pay child support due, award of attorney fee was proper under statute giving court such power when father fails or refuses to maintain his children, notwithstanding that husband may have based refusal on good-faith misinterpretation of separation agreement. D.C. Code § 16-916. *McGehee v. Maxfield*, 256 A.2d 576, 1969 D.C. App. LEXIS 302 (App. 1969).

The statute providing that divorce court may award counsel fees to wife during pendency of suit for divorce affords exclusive means for compelling husband to pay wife's counsel fees. D.C. Code 1961, §§ 16-410, 16-911. *Meyers & Batzell v. Moezie*, 208 A.2d 627, 1965 D.C. App. LEXIS 169 (App. 1965).

Ordinarily, reviewing court would have left question of counsel fees for services in trial court to that court for determination, but in order to bring an end to vexatious litigation, reviewing court, upholding dismissal of hus-

band's annulment action on ground that matter was *res judicata*, ordered that husband pay \$1,000 to wife for legal services in reviewing and trial courts. D.C. Code 1961, § 16-911. *Gullo v. Hirst*, 207 A.2d 662, 1965 D.C. App. LEXIS 162 (App. 1965).

The trial judge has a wide discretion to award or deny counsel fees in the domestic relations field. *Gullo v. Hirst*, 207 A.2d 662, 1965 D.C. App. LEXIS 162 (App. 1965).

The basic purpose of counsel fees provision in subsection (a)(1) of this section is to ensure that a party in a divorce action not be hindered unfairly in maintaining the action by unequal burdens between the spouses. *Norris v. Norris*, 110 WLR 601 (Super. Ct. 1982).

### Child custody and support.

Failure of husband to pay court-ordered child support did not warrant prevention or curtailment of contact between husband and child, in absence of compelling showing that visitation with husband would be harmful to child, in child custody proceeding. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

Public policy requires the treatment of support of children and visitation rights as distinct problems. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

Irregularity of husband's visitation with child did not constitute grounds for extinguishing his right to visitation with child, in custody proceeding. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

A parent's right to custody is not absolute. In *re Ko.W.*, 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Parent's right of visitation is not absolute. In *re D.M.*, 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Although, by its own terms, statute allowing courts to award temporary support in child custody proceedings does not provide a time limit by which trial court must decide petitioner's motion, trial court, consistent with stated purpose of pendente lite relief, must consider motions for temporary child support in timely manner, particularly after petitioner makes it clear that her financial situation will become critical without support from the other parent. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

"Pendente lite" is defined as pending lawsuit, during actual progress of suit, or during litigation, and because pendente lite support is, by definition, interim and transient, right to such support can be irretrievably lost by delay. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Trial court erred in refusing to grant hearing and deferring until trial unwed mother's motion for pendente lite child support; in deferring mother's motion until trial, court thwarted pur-

pose of pendente lite relief, and court's delay in addressing motion forced mother to give up custody of child five weeks prior to trial and prejudiced her substantial rights by contributing to one of the factors that entered into court's analysis of custodial arrangement which would be in child's best interest, i.e., child's residence with father at time of trial. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Trial court must resolve pendente lite child support matters as expeditiously as possible, calendar pressures notwithstanding, and certainly prior to time when the situation becomes dire for petitioner. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

In divorce proceedings, trial court did not have authority under divorce statutes to remove child custody from mother and award permanent custody to children's maternal grandmother, where grandmother was a third party to the proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Trial court did not have authority to remove child custody from mother and award permanent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Trial court did not have authority to remove custody of son from mother and award permanent custody to maternal grandmother, in consolidated divorce and neglect proceedings, where neither parent was alleged to have neglected the boy, and no neglect proceeding was ever brought with respect to him. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2301 et seq. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Divorce statutes contemplate an award of child custody only as between parents who are parties to a divorce proceeding. D.C. Code 1981, §§ 11-1101, 16-911, 16-914. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed. D.C. Code 1981, §§ 11-1101, 16-911, 16-914,



16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Divorce court gave adequate consideration to relationship between children and their half-brother, who was husband's son, before awarding custody of children to wife; though home study did not address relationship between children and half-brother, court probation officer who performed home study testified that the children were "bonded" and had a very close relationship with half-brother, and court's final order included provision for half-brother to visit children at wife's home, reflecting court's concern for maintaining and nurturing the relationship. D.C. Code 1981, §§ 16-911(a)(5)(C), 16-914(a)(3)(C). Spires v. Spires, 743 A.2d 186, 1999 D.C. App. LEXIS 297 (1999).

Term "who," as used in child custody statutes, is not necessarily singular and, thus, does not limit court's authority to award joint custody to parents. D.C. Code 1981, § 16-911(a)(5) (repealed). Ysla v. Lopez, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Parents' inability to cooperate or communicate does not preclude award of joint custody, either under amendments to custody statute or under earlier Taylor decision enumerating factors to be considered in determining whether to award joint custody. D.C. Code 1981, §§ 16-911(a)(5)(A-Q), 16-914(a)(3)(A-Q). Ysla v. Lopez, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Remand was required for further articulation of trial court's reasoning in awarding joint legal custody to parents it found to be unable to cooperate or communicate with each other. D.C. Code 1981, § 16-911(a-2)(6)(C). Ysla v. Lopez, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Trial court's refusal to give predominant weight to successful adjustment of two minor children to wife's custody over interim 15 months from date of separation of parties during pendency of divorce litigation in awarding custody to husband, at expense of attachment children had formed with both parents was not abuse of discretion; highlighting wife's role in most recent, interim custody arrangement could be contrary to children's best interests. D.C. Code 1981, § 16-914(a)(4). Prost v. Greene, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Husband could be granted pendente lite custody of parties' minor child in order to preserve status quo, whereby child would continue living with husband's father and stepmother pending entry of final custody order; though wife argued that custody had in effect been awarded to grandparents, husband visited child on daily basis and made decisions imposed upon custodial parent. D.C. Code 1981, § 16-911(a)(5).

Fitzgerald v. Fitzgerald, 566 A.2d 719, 1989 D.C. App. LEXIS 239 (1989).

Mere inclusion of relevant fact that child had resided with mother "except for a brief period of time, for most of the child's life" did not indicate that it was a dispositive or even influential consideration in custody action brought by father, nor did it indicate that court believed either maternity or present physical possession was presumptively significant to custody determination. D.C. Code §§ 16-911(a)(4), 16-914. Moore v. Moore, 391 A.2d 762, 1978 D.C. App. LEXIS 298 (1978).

Paramount consideration in child custody cases is the welfare of the child. Dorsett v. Dorsett, 281 A.2d 290, 1971 D.C. App. LEXIS 201 (1971).

Court, which denied wife's request for limited divorce, did not err in awarding custody of 20-month-old child to wife with right of husband to visit child each Sunday from nine in the morning to six at night. Bradley v. Bradley, 172 A.2d 414, 1961 D.C. App. LEXIS 246 (Cr.App. 1961).

Father would be awarded sole legal and physical custody of minor child, who was 15 years old at the time that the case was decided; child had adjusted to a structured, loving, and peaceful home life since he began living with father and father's family, father and his wife were positive role models for child, mother expressed conduct during the litigation that raised concerns about her ability to make rational decisions, mother committed an intrafamily offense by committing acts that placed father's wife in fear of imminent bodily harm, and, inter alia, placement of child with mother would probably precipitate a regression to child's old disruptive, violent, and antisocial behavior. Woods v. Dumas, 136 WLR 2025 (Super. Ct. 2007).

#### **Children-out-of-wedlock.**

It was in child's best interest to award primary residential custody to unwed father in order to maintain continuity in her environment, as child's residence had changed a number of times in her young life; father had the more stable and supportive living arrangement for young child, father's family members were always available during the day to help father take care of child, there were a lot of children in neighborhood with whom child could interact, and mother's residential situation was unsettled at best, in that she seemingly moved from place to place. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Custody disputes between unmarried parents should be resolved by reference to the same statutory factors considered in determining best interests of children whose parents have been married to each other. D.C. Code

1981, §§ 16-911, 16-914. *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Fact that parents never married may be considered by court in determining whether to award joint custody under factors listed in statute creating presumption in favor of joint custody. D.C. Code 1981, §§ 16-911(a)(5)(A-Q), 16-914(a)(3)(A-Q). *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Father's wages could be assigned to pay child support and attorney fees, which mother incurred in child custody and support proceeding, even though he was not in arrears on attorney fees at time of court order, where he was two months behind in court-ordered support payments. D.C. Code 1981, §§ 16-911(a)(4), 16-916, 16-916(c, d). *Martin v. Tate*, 492 A.2d 270, 1985 D.C. App. LEXIS 389 (1985).

In dispute between natural mother and father over custody of child, determination of what is child's best interests shall be made solely by reference to facts of particular case without resort to presumption in favor of either party; overruling prior decisions. D.C. Code §§ 16-911(a)(4), 16-914. *Bazemore v. Davis*, 394 A.2d 1377, 1978 D.C. App. LEXIS 569 (1978).

### Enforcement.

When party is in arrears on one type of court-ordered payment, court may order wage assignment not only as to that type of payment, but also as to any other type which court may require under statute governing child support and maintenance. D.C. Code 1981, §§ 16-911(a)(4), 16-916. *Martin v. Tate*, 492 A.2d 270, 1985 D.C. App. LEXIS 389 (1985).

Former husband's evidence concerning reduction of his income, concerning added expenses due to his daughter's wedding, and concerning his payment of wife's pharmacy bills, physicians' bills and alimony satisfied burden of showing justification for failure to comply entirely with pendente lite alimony order and showed substantial compliance with it, and thus it was within discretion of trial court to deny former wife's contempt motion. *Hackes v. Hackes*, 446 A.2d 396, 1982 D.C. App. LEXIS 372 (1982).

Former husband's motion to reduce support obligations ordered in divorce decree gave trial court sufficient notice that he might be unable to meet his obligations under order staying prison sentence for contempt of the support obligation and requiring that he pay a certain amount of the arrearages, and was in effect a request for relief from terms of the stay; therefore, finding that former husband had not proffered any defense or justification for his violation of the stay was plainly wrong and without evidence to support it, and thus trial court abused its discretion in revoking the stay and committing former husband to jail. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916,

17-305(a). *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Although the court may hold a debtor in civil contempt to force compliance with a child support order, the trial court must predicate its application of such sanction on a finding that the defendant is able to pay the debt owed, considering all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Trial court had authority to order father jailed for failing to make child support payments as were set out in decree dissolving marriage, where sanction which was ultimately levied against him was one which was specifically provided for by statute. D.C. Code §§ 16-911, 16-912. *Wells v. Wells*, 358 A.2d 648, 1976 D.C. App. LEXIS 290 (1976).

Trial court, in divorce proceedings, did not abuse discretion in finding husband, who had repeatedly failed to make any significant attempt to satisfy requirements of previous lawful orders and judgments for arrearages, in willful contempt. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Neither traditional doctrine of supersedeas nor more restrictive philosophy reflected in related general statutory attachment procedures mandate limitation of divorce court's exercise of distinct and supplemental authority to enforce any order relating to divorce by attachment and by sequestration of husband's property. D.C. Code §§ 16-501 et seq., 16-911; D.C. Code SCR, Civil Rule 62-I. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Holding of husband's funds in escrow, to assure payment of arrearages of temporary support or alimony, whether pending initial appeal from divorce judgment or in anticipation of readjudication of cause on remand, lies within equitable authority of trial court arising from special statutory provisions governing divorce proceedings. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Extrinsic judgments entered in favor of husband are within purview of divorce court's sequestration authority. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Ordering of sequestration to enforce order of temporary alimony or maintenance rests within discretion of trial court and will not be disturbed absent clear abuse. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).



Trial court, in divorce proceedings, did not abuse discretion in ordering continued sequestration of husband's extrinsic tort settlement funds after judgment for arrearages of temporary support and maintenance, which was being enforced by said sequestration, was vacated and remanded for trial *de novo*. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

In divorce action brought by wife, the court of general sessions had authority to imprison husband to compel him to pay his wife's counsel fees, pursuant to order contained in the final decree of divorce, despite contention that such order was not one made "during the pendency of an action." D.C. Code §§ 15-320, 16-911. *Thunberg v. Thunberg*, 283 A.2d 444, 1971 D.C. App. LEXIS 235 (1971).

Trial court could not commit husband for his contemptuous failure to comply with order for specific performance of agreement to pay wife \$200 monthly for her support though husband was able to make such payments but deliberately refused to carry out his agreement and money judgments against him could not be collected by ordinary process. D.C. Code §§ 15-320(c), 16-911, 16-912, 16-916. *O'Mara v. O'Mara*, 238 A.2d 586, 1968 D.C. App. LEXIS 129 (App. 1968).

Statute providing for imprisonment for non-payment of counsel fees granted during pendency of divorce suit applied, and facts that divorce sought by husband was denied and that judgment provided for separate maintenance and support payments and for payment of wife's counsel fees by husband did not prevent enforcement of award of counsel fees. D.C. Code 1961, §§ 15-320, 16-911. *Edmonds v. Edmonds*, 212 A.2d 534, 1965 D.C. App. LEXIS 224 (App. 1965).

No further evidence besides husband's admission of failure to pay wife's counsel fees pursuant to judgment ordering husband, who had unsuccessfully sought divorce, to pay separate maintenance and support and counsel fees was necessary on issue of whether sums due under the judgment had been paid, in proceeding on motion by wife to hold husband in contempt. D.C. Code 1961, §§ 15-320, 16-911. *Edmonds v. Edmonds*, 212 A.2d 534, 1965 D.C. App. LEXIS 224 (App. 1965).

#### Evidence.

Policy considerations against admission into evidence of compromise offers, which include encouraging settlement of disputes without trial and enabling a litigant to buy his peace without fear of future collateral consequences and subsequent litigation with third parties, were not applicable to agreement by husband in divorce action to pay \$850 per month alimony pendente lite, since payment of alimony

during pendency of an action for divorce is a preliminary step in the statutory scheme governing disposition of marital suits which differs from an offer to compromise in order to settle a dispute and avoid litigation. D.C. Code §§ 16-904, 16-911, 16-912. *Bradt v. Bradt*, 300 A.2d 445, 1973 D.C. App. LEXIS 223 (1973).

#### In general.

Parent has legal duty to provide support to his or her children if able to do so, and court may enforce that duty by appropriate order. D.C. Code 1981, §§ 16-911(a)(1-4), 16-916(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

#### Litigation costs.

Wife, who separated from her physician husband after 26 years of marriage, was entitled to suit money, including counsel fees, to maintain her suit for spousal support. D.C. Code 1981, § 16-916(a). *Atkinson v. Atkinson*, 730 A.2d 667, 1999 D.C. App. LEXIS 128 (1999).

Statute which allows award of suit money in divorce actions in order to enable receiving spouse to maintain action is designed to ensure that party in divorce action is not hindered unfairly in maintaining action by unequal burdens between spouses. D.C. Code 1981, § 16-911(a)(1). *Tydings v. Tydings*, 567 A.2d 886, 1989 D.C. App. LEXIS 256 (1989).

Statute authorizing trial court to require the husband or wife to pay suit money including counsel fees to enable such other spouse to conduct the case, does not authorize the court to require an attorney for a party to pay counsel fees personally. D.C. Code 1981, § 16-911(a)(1). *Charles v. Charles*, 505 A.2d 462, 1986 D.C. App. LEXIS 286 (1986).

A husband can be held liable for legal expenses incurred by wife in divorce action only if divorce court so orders during pendency of action. D.C. Code 1961, §§ 16-410, 16-911. *Meyers & Batzell v. Moezie*, 208 A.2d 627, 1965 D.C. App. LEXIS 169 (App. 1965).

#### Modification.

Father did not meet his burden of demonstrating that circumstances had changed to the extent that removal of caretaker requirement from visitation order would be in child's best interest; father did not watch child closely enough and drove too fast with child in the car. D.C. Code 1981, § 16-911(a-2)(4)(A). *Galbis v. Nadal*, 734 A.2d 1094, 1999 D.C. App. LEXIS 158 (1999).

In ruling on motion to modify custody provisions of parties' voluntary separation agreement, where agreement has been incorporated but not merged into divorce decree, court must apply *Rice/Cooper* test, which allows for such modification only if court finds that (1) there has been change in circumstances which was not foreseen at the time agreement was en-

tered, and (2) the change is both substantial and material to welfare and best interest of children; court is not permitted to substitute its consideration of the factors set forth in statute regarding "best interest of the child" analysis. D.C. Code 1981, § 16-911(a). *Foster-Gross v. Puente*, 656 A.2d 733, 1995 D.C. App. LEXIS 70 (1995).

Where initial request for relief from alimony order had been denied on May 10 and only motion pending at time that court entered a final order reducing alimony was one filed on July 30, court could modify the award retroactively to July 30. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Support provisions of separation agreement incorporated in divorce decree were modified, and husband could not be held in contempt for failure to comply therewith, where in subsequent custody and support proceeding court indicated, with acquiescence of wife's counsel, that support matters would be left for determination after custody matter, and custody was later awarded to husband, with observation that support would not be awarded wife. D.C. Code §§ 16-911, 16-912. *Craig v. Craig*, 305 A.2d 267, 1973 D.C. App. LEXIS 273 (1973).

### Presumptions.

There is presumption that children of tender years are better off with their mothers, absent finding that the mother is unfit; the presumption does not preclude trial judge from considering evidence pointing to another conclusion. D.C. Code § 16-904. *Dorsett v. Dorsett*, 281 A.2d 290, 1971 D.C. App. LEXIS 201 (1971).

### Review.

In reviewing child custody determinations, appellate court is constrained to focus its review on best interests of the child, and not on those of the parents vis-a-vis each other. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

In reviewing trial court's determination of custody in the case of a child of unmarried parents where both parents have been actively involved in upbringing of the child, the same criteria apply as in custodial cases involving married parents; that is, court is guided by best interests of the child. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

On review of child custody determination, appellate court's focus must on whether trial court's ruling was made in best interests of the child, not on whether parent has unclean hands. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Since trial court is in better position to determine what will be best for child, appellate court will not reverse its determination of child custody except for clear abuse of discretion. *John-*

*son v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Pendente lite award of child support and temporary alimony in divorce action did not alter, but rather maintained, status quo, and thus, trial court's order awarding such support were not appealable as interlocutory order changing or affecting possession of property. D.C. Code 1981, §§ 11-721(a)(2)(C), 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Pendente lite award of child support and alimony entered in divorce proceeding was not immediately appealable as collateral order; it did not conclusively determine any disputed question of law because trial court could modify such award at any time and order recoupment of prior payments, it did not resolve issue separate from merits of case because it was inherent part of divorce proceeding and had no independent existence, and it would be reviewable on appeal from final judgment of divorce. D.C. Code 1981, § 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Court of Appeals' scope of review of motion for attorney fees in divorce action is a limited one, because disposition of such motions is firmly committed to informed discretion of trial court; therefore, it requires very strong showing of abuse of discretion to set aside decision of trial court. *Prost v. Greene*, 675 A.2d 471, 1996 D.C. App. LEXIS 73 (1996).

Court of Appeals' review of attorney's fee award is deferential because such award is committed to sound discretion of trial court. D.C. Code, § 16-911(a)(1). *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Attorney fee awards in domestic relations cases will not be set aside unless appellant makes very strong showing of abuse of discretion. *King v. King*, 579 A.2d 659, 1990 D.C. App. LEXIS 194 (1990).

In determining whether court erred in rulings on motions for attorney fees in divorce case, review is limited as disposition is firmly committed to informed discretion of trial court. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Remand was required for reconsideration of amount of attorney fees to award to husband in divorce action where husband made eleventh hour request unsubstantiated by any attempt at accounting and where trial court's comments indicated that more than permissible weight was given to behavior of wife in determining the amount of the award. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Former wife was estopped from arguing on appeal that marital home was her sole and separate property not subject to distribution under statute where former wife had posited at



trial that the house was subject to distribution by the court. D.C. Code 1981, § 16-910. *Hackes v. Hackes*, 446 A.2d 396, 1982 D.C. App. LEXIS 372 (1982).

In child custody cases arising out of divorce, reviewing court accords great deference to the trial judge. D.C. Code § 16-904. *Dorsett v. Dorsett*, 281 A.2d 290, 1971 D.C. App. LEXIS 201 (1971).

#### Temporary alimony.

Temporary alimony is allowance made to wife for her maintenance during pendency of action for divorce and it is awarded to furnish wife means of living, in order that she may not become charge upon state while her rights are being adjudicated. D.C. Code 1981, § 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Whether to grant request for temporary support in divorce case is matter entrusted to sound discretion of trial court. D.C. Code 1981, § 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Purpose of temporary alimony is to furnish a needy spouse with funds sufficient to prevent the spouse from becoming a public charge while his or her rights are being adjudicated. D.C. Code § 16-911. *Burtoff v. Burtoff*, 418 A.2d 1085, 1980 D.C. App. LEXIS 353 (1980).

Only so long as a suit for divorce is pending does applicable statute authorize court to require husband to pay temporary alimony and to enforce obedience by attachment and imprisonment and any allowance of alimony which is to be effective after suit for divorce has ceased to pend must be made under permanent alimony code provision. D.C. Code § 16-911. *Burtoff v. Burtoff*, 418 A.2d 1085, 1980 D.C. App. LEXIS 353 (1980).

Where wife failed to make a proper showing or take necessary steps to pursue her claim to pendente lite support while divorce action was pending, issue of temporary support became moot after rendition of final judgment of divorce. D.C. Code § 16-911. *Burtoff v. Burtoff*, 418 A.2d 1085, 1980 D.C. App. LEXIS 353 (1980).

Where it was found that wife who sought divorce was unable to support herself and that husband was capable of rendering financial assistance, trial court could award alimony pendente lite without inquiring into merits of divorce action. D.C. Code § 16-911. *Kreuz v. Kreuz*, 354 A.2d 867, 1976 D.C. App. LEXIS 512 (1976).

Though trial court, in determining whether to order husband to pay alimony pendente lite to wife, may inquire into merits of divorce action to determine probability of ultimate success, the decision to hear such evidence is a matter entrusted to trial court's discretion. D.C. Code § 16-911. *Kreuz v. Kreuz*, 354 A.2d 867, 1976 D.C. App. LEXIS 512 (1976).

D.C. Code § 16-911 and 16-916 plainly authorize the court to award alimony and maintenance. There are no fixed rules or formulas; each determination must rest upon the particular facts of each case. The factors to be considered are the duration of the marriage; the ages and health of the parties; their respective financial positions, past and prospective; their contributions to the family; the needs of the requesting spouse; the other spouse's ability to pay; and society's interest in preventing the needy spouse from becoming a public charge. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

## § 16-912. Permanent alimony; enforcement. [Repealed].

### Repealed.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 15, 23 DCR 2544; Apr. 27, 2001, D.C. Law 13-292, § 803(b)(2), 48 DCR 2087; Oct. 19, 2002, D.C. Law 14-207, § 2(g), 49 DCR 7827.)

**Cross references.** — Child support enforcement, attachment or garnishment of wages of District of Columbia employees, see § 1-507.

**Prior Codifications.** — 1981 Ed., § 16-912. 1973 Ed., § 16-912.

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-911.

**Legislative history of Law 13-292.** — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in

Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

§ 16-913. Alimony.

(a) When a divorce or legal separation is granted, or when a termination of a domestic partnership becomes effective under § 32-702(d) and one partner has filed a petition for relief available under this section, the Court may require either party to pay alimony to the other party if it seems just and proper.

(b) The award of alimony may be indefinite or term-limited and structured as appropriate to the facts. The Court shall determine the amount and the time period for the award of alimony.

(c) An award of alimony may be retroactive to the date of the filing of the pleading that requests alimony.

(d) In making an award of alimony, the Court shall consider all the relevant factors necessary for a fair and equitable award, including, but not limited to, the:

(1) ability of the party seeking alimony to be wholly or partly self-supporting;

(2) time necessary for the party seeking alimony to gain sufficient education or training to enable that party to secure suitable employment;

(3) standard of living that the parties established during their marriage or domestic partnership, but giving consideration to the fact that there will be 2 households to maintain;

(4) duration of the marriage or domestic partnership;

(5) circumstances which contributed to the estrangement of the parties;

(6) age of each party;

(7) physical and mental condition of each party;

(8) ability of the party from whom alimony is sought to meet his or her needs while meeting the needs of the other party; and

(9) financial needs and financial resources of each party, including:

(A) income;

(B) income from assets, both those that are the property of the marriage or domestic partnership and those that are not;

(C) potential income which may be imputed to non-income producing assets of a party;

(D) any previous award of child support in this case;

(E) the financial obligations of each party;

(F) the right of a party to receive retirement benefits; and

(G) the taxability or non-taxability of income.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 16(a), 23 DCR 2544; Oct. 19, 2002, D.C. Law 14-207, § 2(h), 49 DCR 7827; Apr. 4, 2006, D.C. Law 16-79, § 4(f), 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 131(b), 53 DCR 6794; Sept. 12, 2008, D.C. Law 17-231, § 20(d), 55 DCR 6758.)

**Prior Codifications.** — 1981 Ed., § 16-913.  
1973 Ed., § 16-913.

**Effect of amendments.** — D.C. Law 14-207 rewrote the section which had read as follows:

“When a divorce is granted on the application of the husband or wife, the court may require him or her to pay alimony to the other spouse, if it seems just and proper.”



D.C. Law 16-79, in subsec. (a), substituted "divorce or legal separation is granted, or when a termination of a domestic partnership becomes effective under § 32-702 and one partner has filed a petition for relief under this section," for "divorce or legal separation is granted,"; in par. (d)(3), substituted "marriage or domestic partnership" for "marriage"; in par. (d)(4), substituted "marriage or domestic partnership" for "marriage"; and in par. (d)(9)(B), substituted "both those that are the property of the marriage or domestic partnership and those that are not" for "both marital or non-marital".

D.C. Law 16-191, in subsec. (a), inserted "available" following "relief".

D.C. Law 17-231, in subsec. (a), substituted "§ 32-702(d)" for "§ 32-702".

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-911.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

## CASE NOTES

### ANALYSIS

#### Agreements.

Award of marital property.

Desertion.

Factors in awarding alimony.

Findings.

In general.

Modification.

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Purpose.

Review.

#### Agreements.

Renegotiation of former husband's alimony obligation upon husband's retirement was part of oral separation agreement entered on record, although agreement was never reduced to writing and judgment of divorce did not include term; at hearing on separation agreement, parties discussed term, wife agreed, after court recited added term, to be bound by agreement, and wife never objected to term. *Elwell v. Elwell*, 947 A.2d 1136, 2008 D.C. App. LEXIS 231 (2008).

Former husband was not collaterally estopped from asserting claim on motion to reduce or terminate alimony that settlement agreement provided that issue of alimony would be renegotiated upon his retirement, notwithstanding statement in judgment of absolute divorce that alimony issue was resolved through parties' private agreement, where purpose of the court's order was to divide the parties' personal property and alimony was not at issue at that stage of the proceedings, there was no indication from prior divorce proceedings that trial court was presented with issue whether renegotiation of alimony at husband's retirement was part of separation agreement, and recitation of the oral separation agreement was likely included for the convenience of the readers and the litigants. *Elwell v. Elwell*, 947 A.2d 1136, 2008 D.C. App. LEXIS 231 (2008).

Judgment of absolute divorce stating that alimony issue was resolved through parties' private agreement did not bar, on grounds of res judicata, husband's claim on motion to terminate or reduce alimony that he and wife agreed that issue of alimony would be renegotiated upon his retirement; husband never claimed at that time that alimony would be reduced, especially since husband was still gainfully employed at time of prior order, and, therefore, condition precedent to renegotiating alimony had not been satisfied, and issue was not ripe for adjudication at that time. *Elwell v. Elwell*, 947 A.2d 1136, 2008 D.C. App. LEXIS 231 (2008).

Statute did not compel court to award, as alimony, amount which husband agreed to pay wife in separation agreement. D.C. Code § 16-913. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

#### Award of marital property.

Husband who was homeless after separation despite enjoying a moderate standard of living during the marriage was entitled to an award of marital property in lieu of alimony incident to divorce; contrary to wife's argument on appeal, the parties enjoyed a moderate standard of living, with evidence showing that they had purchased four properties during the marriage and that wife had been able to afford elective cosmetic surgeries, and husband was largely uneducated and had no income after the divorce, whereas wife enjoyed a high income as a lawyer at a large firm. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

#### Desertion.

Proof that wife has abandoned marital abode and concomitant responsibilities of marital relation without just cause or reason may be considered in determining whether to award her alimony. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966),

writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Desertion, while bar to separate maintenance, is not absolute bar to alimony but is one of number of factors to be considered by judge in determining whether to award alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

Even if wife had deserted marital abode, that would not bar payment of all alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

Denial of alimony to wife who had intentionally abandoned husband and marital home without justification and had made only minimal contribution of accumulation of property of husband entitled to divorce on ground of desertion was not abuse of discretion. D.C. Code 1961, §§ 16-904, 16-913. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

#### **Factors in awarding alimony.**

Denial of alimony to wife who left marital abode was not abuse of discretion where wife presented but minimal evidence relating to contribution to family property and she refused to testify with respect to her present income and ability to earn a living. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

In exercising its discretion regarding grant of alimony, trial court should consider certain factors, such as: duration of marriage; ages and health of the parties; their respective financial positions, both past and prospective; requesting spouse's contribution to the family support and property ownership; needs of requesting spouse; other spouse's ability to contribute thereto; and interest of society generally in preventing the requesting spouse from becoming a public charge. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Evidence indicated that ex-husband's resignation from company, where he earned approximately \$1.2 million annually, was due to illegal political contribution, rather than to any intention to voluntarily reduce his income, and, as such, trial court did not abuse its discretion in estimating ex-husband's prospective income, for purposes of alimony award, based on his annual salary at time of alimony trial, rather than on his income three years earlier, prior to leaving company. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Trial court did not abuse its discretion in denying wife alimony, while awarding her all marital property, including a valuable home and a one-year-old automobile "in lieu of" ali-

mony; judgment specifically referred to ages, health, current financial status and needs, and respective contributions of both parties to marital property, focused on wife's employability, and considered husband's financial situation. *Weiner v. Weiner*, 605 A.2d 18, 1992 D.C. App. LEXIS 74 (1992).

Trial court's failure to expressly address wife's request for alimony was error where wife was 51 years old, she suffered from degenerative eye condition and, possibly, heart condition and was unable to work due to injuries received in automobile accident, and her financial status after divorce was precarious. *Ealey v. Ealey*, 596 A.2d 43, 1991 D.C. App. LEXIS 209 (1991).

Once divorce is granted, rationale justifying denial of support payments during separation caused by desertion fails and court then becomes bound to consider equities of case in awarding or disallowing alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

Because alimony is not intended as punishment, it may be awarded to a wife even though divorce was granted on husband's application and even if husband successfully proved adultery as grounds for divorce. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Unchastity of a former wife, subsequent to divorce and allowance of alimony, does not by itself justify termination or modification of alimony payments, although it is a factor to be considered in appropriate circumstances. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Just as failure of wife to lead a chaste life will afford no ground for depriving her of her alimony as previously fixed, failure of husband to conduct himself properly will afford no ground for increasing her award. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Fact that husband initiated and obtained divorce between parties was not a controlling factor on question of later termination of alimony to wife. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Factors which serve as an objective when confronting question of permanent alimony bear most heavily upon question of changed financial conditions and, as such, obtain increased significance when addressing questions concerning termination of alimony. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

There is no fixed set of rules or formula for determining permanent alimony and any award must be made only after careful study of particular facts of each case. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).



Factors which should serve as an objective when confronting question of permanent alimony include duration of marriage, ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Award of \$35 per week for support and maintenance of wife who was in poor health, incapable of working, had no source of income or other property and who had been married to husband for 26 years, and of two minor children of marriage by husband with salary of approximately \$13,400 per year and who had admitted by pleadings and testimony that wife needed at least \$250 per month to support herself and two children did not constitute an exercise of sound discretion. D.C. Code §§ 16-913, 17-305(a). *Majette v. Majette*, 261 A.2d 824, 1970 D.C. App. LEXIS 212 (App. 1970).

Factors to be considered in determining whether alimony should be granted and amount thereof include duration of marriage, ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Award of alimony which appeared to be predicated only upon wife's assertion that she could use an additional \$50 per month was erroneous. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Criteria for award of alimony to wife against whom divorce is granted are duration of marriage, number and age of children, age and health of the parties, their present and prospective economic conditions, wife's contribution to accumulation of husband's property, circumstances under which divorce was granted, effect upon family, and the interest of society generally to prevent one from becoming a public charge. D.C. Code 1961, § 16-913. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

### Findings.

In calculating ex-wife's earning capacity for purposes of alimony award, trial court did not abuse its discretion in considering that ex-wife's uncorroborated testimony about debilitating effects of her depression were

unpersuasive in light of all evidence presented at trial and finding that ex-wife was capable of full-time employment based on trial court's assessment of her appearance and demeanor at trial and her testimony concerning her work as real estate agent in selling marital home. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Trial court did not abuse its discretion in considering ex-wife's reasonable prospective investment income in determining the appropriate amount of alimony; after considering ex-wife's monthly expenses and income, court found that ex-wife was left with negative yearly balance of \$4,800 and that she could recover this annual shortfall with the conceded \$12,500 investment income from her liquid assets. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Where trial court in awarding alimony to wife in action granting divorce on husband's application merely stated that it found the husband to be able to underwrite an alimony award but made no mention of fact that wife required any amount for her support or how it arrived at amount granted as alimony, case would be remanded to trial court for a more detailed statement of reasons for the action taken. D.C. Code § 16-913. *Wood v. Wood*, 309 A.2d 103, 1973 D.C. App. LEXIS 348 (1973).

### In general.

Award of alimony is not automatic, and is made only after a careful study of facts and circumstances existing in each particular case. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

### Modification.

Where allowance for alimony becomes unduly burdensome, husband is free to seek a suitable adjustment by making a proper showing of a change in circumstances. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Only substantially changed circumstances and conditions of parties will warrant a modification of a decree of divorce; thus, in order to reduce or terminate alimony payments, husband must show a change either in respect to his ability to support his wife or in wife's need for such support or both. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

A modification of alimony must reflect changed needs or changed financial resources and cannot be used to punish wife for her immoral conduct. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

If it is shown that former wife is being supported in whole or in part by her paramour, former husband may come into court for a

determination of whether alimony should be terminated or reduced; if paramour resides in wife's home without contributing anything toward purchase of food or payment of normal household bills, there may be a reasonable inference that wife's alimony is being used, at least in part, for benefit of paramour, in which case it could be argued with force that amount thereof should be modified accordingly. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

### Orders.

It would have been better practice for court to specify how much of amount awarded was alimony for wife, but failure to do so was not fatal. D.C. Code §§ 16-914, 30-301 et seq.; D.C. Code SCR, Dom.Rel. Rules 60, 401(b)(4); Domestic Relations Law N.Y. § 30 et seq. *Mitchell v. Mitchell*, 310 A.2d 837, 1973 D.C. App. LEXIS 384 (1973).

Where trial court heard evidence on issue whether alimony should be granted, and amount thereof, it was not fatal for court to use "support" in lieu of "alimony." D.C. Code § 30-301 et seq.; D.C. Code SCR, Dom.Rel. Rules 60, 401(b)(4); Domestic Relations Law N.Y. § 30 et seq. *Mitchell v. Mitchell*, 310 A.2d 837, 1973 D.C. App. LEXIS 384 (1973).

### Pleadings.

Wife made her request for separate award of alimony clear in record, and trial court having adequate notice of wife's request, should have addressed issue of alimony where, even though wife's answer in counterclaim for absolute divorce did not specifically request alimony, her other pleadings contained that request, and husband's counterclaim to complaint for legal separation specifically sought that he not be required to pay alimony to wife. *Ealey v. Ealey*, 596 A.2d 43, 1991 D.C. App. LEXIS 209 (1991).

### Purpose.

Objective of alimony is to provide reasonable and necessary support. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Alimony is not intended as a penalty to be imposed upon husband nor as compensation to solace wife; its objective is to provide reasonable and necessary support to wife. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Policy underlying alimony statutes is to insure that where wife is entitled to support, she will receive it, and not become a public charge. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

### Review.

Award of alimony with respect to divorce

granted upon husband's application will not be disturbed, unless an abuse of discretion is made manifest by the record. D.C. Code § 16-913. *Majette v. Majette*, 261 A.2d 824, 1970 D.C. App. LEXIS 212 (App. 1970).

Trial court's determination of propriety of award of alimony under all circumstances will not be disturbed, unless abuse of discretion is made manifest by record. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

While there is no fixed set of rules or formulae for determining permanent alimony, the appellate court will not reverse an alimony award so long as the trial court made a fair and equitable award after considering the particular facts of the case in light of all relevant factors, including those delineated in the alimony statute. *Sudderth v. Sudderth*, 984 A.2d 1262, 2009 D.C. App. LEXIS 640 (2009).

Decisions respecting grant or denial of alimony are committed to sound discretion of the trial court and will be disturbed on appeal only when record manifests abuse of that discretion. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Appellate court may reverse alimony award only where trial court's finding is plainly wrong or without substantial evidence to support it. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

In context of calculating ex-wife's earning capacity for purposes of alimony, trial court's finding that ex-wife was capable of full-time employment with earning potential of \$36,000 to \$40,000 per year was not clearly erroneous; court considered ex-wife's testimony regarding effect of depression on her mental state, but thought that her testimony alone was insufficient to counter other evidence of her ability to work, and during the five years prior to their separation, ex-wife's maximum yearly earnings as real estate agent were \$35,000. *Lake v. Lake*, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Trial judges have broad discretion in determining amount of alimony and child support payments, and that determination will not be disturbed on appeal unless court clearly abused its discretion. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

Reviewing court may reverse an alimony award only where finding is plainly wrong or without substantial evidence to support it. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).



## § 16-914. Custody of children.

(a)(1)(A) In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, sexual orientation, or gender identity or expression of a party, in and of itself, shall not be a conclusive consideration. The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:

- (i) sole legal custody;
- (ii) sole physical custody;
- (iii) joint legal custody;
- (iv) joint physical custody; or

(v) any other custody arrangement the Court may determine is in the best interest of the child.

(B) For the purposes of this paragraph, the term:

(i) “Legal custody” means legal responsibility for a child. The term “legal custody” includes the right to make decisions regarding that child’s health, education, and general welfare, the right to access the child’s educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(ii) “Physical custody” means a child’s living arrangements. The term “physical custody” includes a child’s residency or visitation schedule.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children’s Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children’s Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred.

(3) In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (D) the child's adjustment to his or her home, school, and community;
- (E) the mental and physical health of all individuals involved;
- (F) evidence of an intrafamily offense as defined in section 16-1001(5) [now § 16-1001(8)];

(G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;

- (H) the willingness of the parents to share custody;
- (I) the prior involvement of each parent in the child's life;
- (J) the potential disruption of the child's social and school life;
- (K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;
- (L) the demands of parental employment;
- (M) the age and number of children;
- (N) the sincerity of each parent's request;
- (O) the parent's ability to financially support a joint custody arrangement;

(P) the impact on Temporary Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and

(Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) Repealed.

(a-3)(1) A minor parent, or the parent, guardian, or other legal representative of a minor parent on the minor parent's behalf, may initiate a custody proceeding under this chapter.

(2) For the purposes of this subsection, the term "minor" means a person under 18 years of age.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party.



(c) In any custody proceeding under this chapter, the Court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

- (1) the residence of the child or children;
- (2) the financial support based on the needs of the child and the actual resources of the parent;
- (3) visitation;
- (4) holidays, birthdays, and vacation visitation;
- (5) transportation of the child between the residences;
- (6) education;
- (7) religious training, if any;
- (8) access to the child's educational, medical, psychiatric, and dental treatment records;
- (9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;
- (10) communication between the child and the parents; and
- (11) the resolution of conflict, such as a recognized family counseling or mediation service, before application to the Court to resolve a conflict.

(d) In making its custody determination, the Court:

(1) shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a)(3) of this section in fashioning a custody order;

(2) shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention; and

(3) may order either or both parents to attend parenting classes.

(e) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in § 16-916.01.

(f)(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.

(2) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(3) The provisions of this chapter shall apply to motions to modify or terminate any award of custody filed after April 18, 1996.

(g) The Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests.

(h) The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.

(i) An objection by one parent to any custody arrangement shall not be the

sole basis for refusing the entry of an order that the Court determines is in the best interest of the minor child.

(j) The Court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, § 2(b), 43 DCR 574; Apr. 20, 1999, D.C. Law 12-241, § 11, 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 142(b), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-207, § 2(i), 49 DCR 7827; June 25, 2008, D.C. Law 17-177, § 10(b), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-368, § 3(a), 56)

**Prior Codifications.** — 1981 Ed., § 16-914.  
1973 Ed., § 16-914.

**Effect of amendments.** — D.C. Law 13-91, in subpar. (a)(3)(P), substituted “or Program on Work” for “Program on Work”.

D.C. Law 14-207, in the section heading, substituted “Custody of children.” for “Retention of jurisdiction as to alimony and custody of children.”; in subsec. (a), rewrote par (1), and in par. (3), substituted “a child” for “infant children” and in subpar. (K) of par. (3), deleted “or children’s”; repealed subsec. (a-2); and added subsecs. (c), (d), (e), (f), (g), (h), (i), and (j).

D.C. Law 17-177, in subsec. (a)(1)(A), substituted “sexual orientation, gender identity or expression” for “or sexual orientation”.

D.C. Law 17-368, in subsec. (a)(2), substituted “§ 16-1001(8)” for “D.C. Official Code section 16-1001(5)” in two places; and added subsec. (a-3).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 11 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 105(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(h) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(h) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(h) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(h) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 11 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 11 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 11 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 11 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform



Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(h) of the Child Support, and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(h) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90 day) amendment of section, see § 105(h) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

**Legislative history of Law 1-87.** — For

legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-911.

**Legislative history of Law 1-107.** — For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 10-154.** — For legislative history of D.C. Law 10-154, see Historical and Statutory Notes following § 16-911.

**Legislative history of Law 11-112.** — For legislative history of D.C. Law 11-112, see Historical and Statutory Notes following § 16-916.03.

**Legislative history of Law 12-241.** — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 16-901.

**Legislative history of Law 13-91.** — For Law 13-91, see notes following § 16-911.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Legislative history of Law 17-177.** — For Law 17-177, see notes following § 16-901.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## CASE NOTES

### ANALYSIS

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### Age of majority.

Fact that a court supplements a continuing and binding contractual support obligation does not vest it with jurisdiction to order sup-

port payments after a child reaches his majority. D.C. Code 1981, § 16-916(c). *Norris v. Norris*, 473 A.2d 380, 1984 D.C. App. LEXIS 346 (1984).

### Arbitration.

While property right can be released by contract, and arbitration of alimony could be binding and nonmodifiable, provisions concerning custody and child support would continue to be within court's jurisdiction despite prelitigation or midlitigation arbitration or agreement. D.C. Code 1981, § 16-914. *Spencer v. Spencer*, 494 A.2d 1279, 1985 D.C. App. LEXIS 414 (1985).

### Arrearages.

Trial court had jurisdiction to consider wife's motion to reduce child support arrearages to judgment although court in original divorce action did not undertake to adjudicate any issue as to support or maintenance and final order was silent as to support and maintenance. D.C. Code 1981, § 30-301 et seq. *Clark v. Clark*, 485 A.2d 621, 1984 D.C. App. LEXIS 578 (1984).

### Attorney fees.

When counsel is required by the party in whose custody the court has deemed the child's best interests, attorney's fees may be granted to that party in defending such grant. *Maybin v. Stewart*, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

A trial court is authorized to grant attorney fees in child custody proceeding where the court finds that counsel was necessary to protect the

interests of the child. *Maybin v. Stewart*, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

Trial court appropriately awarded attorney fees to mother, in proceeding in which father of out-of-wedlock child filed motion to enforce and expand original visitation order; father ceased all visitation attempts and did not resume them until approximately three years later when he filed his motion, instead of following through with terms of original order, father brought mother back to court to "enforce" something that he had essentially abandoned, and when this happened, mother, who had custody of daughter throughout intervening years, necessarily had to retain counsel to defend her child's best interests. *Maybin v. Stewart*, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

Even assuming that a trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, former husband was not entitled to attorney fees for successfully defending against former wife's motion to modify child custody, where former husband made no showing that his ability to care for the children was impaired by the cost of defending against former wife's motion. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Assuming that the trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, the exercise of such authority would be committed to the trial court's discretion. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Former husband was not entitled to award of attorney fees, pursuant to separation and property settlement agreement providing for fee-shifting in favor of a party who successfully brought an action to enforce or implement the terms of the agreement, though trial court denied former wife's motion to modify a child custody order and former husband had brought a counterclaim alleging former wife had not shown grounds for modification and that former wife had interfered with former husband's custodial rights; the trial court did not find that former wife had interfered with former husband's custodial rights, the relief the trial court ordered was no different than if former husband had successfully defended against custody modification but had filed no counterclaim, the fee-shifting provision did not apply to defense of claims, and former husband's counterclaim could not be construed as an action to enforce or implement the agreement. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Factors to be considered in determining award of attorney fees to appointed counsel in domestic relations case include: necessity for services of attorney, quality and nature of work performed, financial ability of party ordered to pay, and fault of the nonaggrieved party. D.C.

Code 1981, §§ 16-911(a)(1), 16-914(a), 16-916, 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

After a decree of divorce in any case granting alimony and support, the case shall still be considered open for any future orders relating to those matters, and an order for the payment of counsel fees is an "order relating to those matters." D.C. Code 1981, § 16-914. *Smith v. Smith*, 445 A.2d 666, 1982 D.C. App. LEXIS 361 (1982), writ of certiorari denied by 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968, 1983 U.S. LEXIS 2990, 51 U.S.L.W. 3509 (1983).

Court can award attorney fees which result from time spent attempting to collect alimony after alimony has been granted. D.C. Code 1981, § 16-914. *Smith v. Smith*, 445 A.2d 666, 1982 D.C. App. LEXIS 361 (1982), writ of certiorari denied by 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968, 1983 U.S. LEXIS 2990, 51 U.S.L.W. 3509 (1983).

### Child neglect.

In domestic relations proceedings, the trial court has continuing jurisdiction to modify child custody arrangements in the best interest of the child based on a change of circumstances both substantial and material to the child's welfare and best interests. *W.D. v. C.S.M.*, 906 A.2d 317, 2006 D.C. App. LEXIS 499 (2006).

Trial court did not have authority to remove child custody from mother and award permanent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Trial court did not have authority to remove custody of son from mother and award permanent custody to maternal grandmother, in consolidated divorce and neglect proceedings, where neither parent was alleged to have neglected the boy, and no neglect proceeding was ever brought with respect to him. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2301 et seq. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed.



D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

### Children-out-of-wedlock.

Trial court did not abuse its discretion when it required parties to attend counseling sessions before further visits could take place, in proceeding in which father of out-of-wedlock child filed motion to enforce and expand original visitation order; father stopped visiting and calling his daughter and more than three years went by before he asked court to "enforce" and "expand" original visitation order, court acted with appropriate caution when it required that parties submit to counseling before resuming any kind of visitation, father was not denied right to visit daughter, and court was merely considering daughter's best interests when it placed conditions on visitation. *Maybin v. Stewart*, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

Custody disputes between unmarried parents should be resolved by reference to the same statutory factors considered in determining best interests of children whose parents have been married to each other. D.C. Code 1981, §§ 16-911, 16-914. *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Fact that parents never married may be considered by court in determining whether to award joint custody under factors listed in statute creating presumption in favor of joint custody. D.C. Code 1981, §§ 16-911(a)(5)(A-Q), 16-914(a)(3)(A-Q). *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Evidence supported finding that both father of child out-of-wedlock and maternal grandmother were fit and capable of caring for minor child and because record did not contain clear and convincing evidence that remaining in her father's custody would be against child's best interests, statutory presumption tipped the balance in favor of placing custody of child with father. D.C. Code 1981, § 21-101(a, b). *Shelton v. Bradley*, 526 A.2d 579, 1987 D.C. App. LEXIS 363 (1987).

In dispute between natural mother and father over custody of child, determination of what is child's best interests shall be made solely by reference to facts of particular case without resort to presumption in favor of either party; overruling prior decisions. D.C. Code §§ 16-911(a)(4), 16-914. *Bazemore v. Davis*, 394 A.2d 1377, 1978 D.C. App. LEXIS 569 (1978).

### Construction with other law.

Superior court had jurisdiction to entertain divorced wife's Uniform Reciprocal Enforcement of Support Act petition seeking alimony from him and seeking to recover amounts he had allegedly failed in the past to pay for

support of her and their children. D.C. Code §§ 30-301 et seq., 30-303. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

### Discretion of court.

Trial court abused its discretion in denying request of mother, who was proceeding in forma pauperis, to obtain transcripts of trial proceedings for purpose of appealing child-custody award; mother's appeal raised substantial non-frivolous issues that could not be properly resolved without requested transcripts. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

### Enforcement.

Trial court has authority to award court costs and attorney's fees in an action to compel payment of child support under the terms of a property settlement agreement. D.C. Code § 16-916. *Eisenberg v. Eisenberg*, 357 A.2d 396, 1976 D.C. App. LEXIS 274 (1976).

While the trial court properly exercised its discretionary authority when it determined that former wife was entitled to court costs and attorney's fees arising out of her action to enforce property settlement agreement, it did not appear that the trial judge considered all the relevant factors necessary to determine reasonable costs and fees. D.C. Code § 16-916. *Eisenberg v. Eisenberg*, 357 A.2d 396, 1976 D.C. App. LEXIS 274 (1976).

### Estoppel.

Trial court, in ruling on complaint for custody of child in domestic relations proceeding, which was filed by former husband who had been appointed custodian of the nonbiological child in neglect proceedings against his former wife and her boyfriend, was precluded under the doctrine of collateral estoppel from reconsidering the prior neglect finding; the neglect determination was a final judgment on the merits, former wife, the party to be estopped, was a party to that prior action, and the neglect determination was essential to the judgment. *K.H. v. R.H.*, 935 A.2d 328, 2007 D.C. App. LEXIS 656 (2007).

### Evidence.

Evidence supported finding that out-of-wedlock child was at risk of further, more serious trouble at school and in his personal life if he continued to live with mother, in support of trial court's decision to grant physical custody to the father during the school year under joint custody order; child had been suspended for fighting, he had failed two courses in his last grading period, and the court found that child's difficulties had worsened despite mother's reasonable attempts to correct them. *N.D. McN. v. R.J.H.*, 979 A.2d 1195, 2009 D.C. App. LEXIS 380 (2009).

There was no evidence in the record supporting trial court's decision to modify the visitation orders to grant ex-husband the right of unsupervised visitation; trial court had previously found that ex-husband had committed intrafamily offenses, finding physical abuse against ex-wife and finding that ex-husband had inappropriately touched child, no expert testified that unsupervised visits between ex-husband and child would be appropriate, and, although ex-husband and his mother testified, neither ex-husband nor his mother was qualified to address statutory inquiry as to impact of ex-husband's unsupervised visitation upon child's emotional development, and no health professional believed that child was psychologically ready to resume unsupervised visits with ex-husband. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

It was not an abuse of discretion for the trial court to determine, on the basis of the evidence, that ex-husband's concerns regarding family therapy were legitimate and did not warrant an evidentiary hearing in connection with ex-wife's motion to compel ex-husband's compliance with custody agreement, which stated that parties would engage with children in family therapy for at least one year; ex-husband expressed his concerns to doctor and ex-wife via e-mail, and he did so repeatedly over course of therapy, which lasted roughly six and a half months, and e-mails also revealed that ex-husband had every intention of carrying out terms of custody agreement by participating in therapy sessions. *Rales v. Rales*, 908 A.2d 64, 2006 D.C. App. LEXIS 531 (2006).

Evidence, including father's kidnapping of child during unsupervised visitation in attempt to claim child custody, was sufficient to demonstrate that best interest of child would be served by awarding permanent custody to mother. *Mitchell v. Hughes*, 755 A.2d 456, 2000 D.C. App. LEXIS 155 (2000).

Trial court was within its authority in rejecting recommendation by expert that wife be awarded sole custody of two minor children, where expert's methodology and conclusion were criticized by another psychiatric expert who noted particularly that expert had failed to interview children at greater length. D.C. Code 1981, § 16-914(a)(3, 5). *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Mere inclusion of relevant fact that child had resided with mother "except for a brief period of time, for most of the child's life" did not indicate that it was a dispositive or even influential consideration in custody action brought by father nor did it indicate that court believed either maternity or present physical possession was presumptively significant to custody determination. D.C. Code §§ 16-911(a)(4), 16-914.

*Moore v. Moore*, 391 A.2d 762, 1978 D.C. App. LEXIS 298 (1978).

Where not one single benefit would inure to child by ruling that human leukocyte antigen results should be admitted to defeat a claim for custody, the test results were not considered. *Andrea v. Murillo*, 121 WLR 2133 (Super. Ct. 1993).

### Findings.

Because of trial court's two previous orders in which it found that ex-husband had committed intrafamily offenses, finding physical abuse against ex-wife and finding that ex-husband had inappropriately touched child, trial court was required to make statutory findings, as predicate to modifying visitation so as to grant ex-husband unsupervised visitation, that child and custodial parent could be adequately protected from harm inflicted by ex-husband and that ex-husband had met his burden of proving that visitation would not endanger child or significantly impair child's emotional development; because trial court did not make the required findings, the court's order modifying visitation was not founded on correct legal principles and lost its insulation of the clearly erroneous standard of review. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

### Foreign judgements.

Where spouse files complaint seeking permanent maintenance, and later seeks modification of family division's order after a court in another jurisdiction has awarded other spouse ex parte divorce, family division may grant relief pursuant to statute providing for relief when former spouse has obtained foreign ex parte divorce as long as notice requirements of that statute are met. D.C. Code 1981, § 16-916(a, b). *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

### Fraud.

Court may set aside for fraud installments of alimony after they have accrued like any other judgment and may always reduce them prospectively as of time when reduction is asked. *Dausuel v. Dausuel*, 195 F.2d 774, 1952 U.S. App. LEXIS 3021 (C.A.D.C. 1952).

A clear showing of fraud, directly related to the matter at issue, is ground for setting aside divorce decree and support and maintenance award. *Mozick v. Mozick*, 245 A.2d 643, 1968 D.C. App. LEXIS 202 (App. 1968).

### Grounds for award of custody.

In child custody case, where district court, acting through different judges, had on four or five previous occasions found wife an unsuitable person to have custody, order requiring that custody be delivered to divorced husband



was not abuse of discretion. *Steele v. Steele*, 168 F.2d 562, 1948 U.S. App. LEXIS 2079 (1948).

In deciding custody, trial court was not entitled to ignore children's wishes as to their custodian merely because of their respective ages of ten and seven. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

A parent's right of visitation is not absolute, and thus, where visits with one parent have detrimental effects or would place the child's emotional welfare at risk, the parental right to immediate and ongoing visitation may have to yield, or may need to be closely supervised, and this is particularly true where the trial court has found that a parent committed an intrafamily offense. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

In carrying out the statutory mandate to consider primarily the best interest of the child in any proceeding between parents in which the custody of a child is raised as an issue, the trial court must address the specific statutory factors for determining child custody. *Dumas v. Woods*, 914 A.2d 676, 2007 D.C. App. LEXIS 1 (2007).

Trial court's refusal to give predominant weight to successful adjustment of two minor children to wife's custody over interim 15 months from date of separation of parties during pendency of divorce litigation in awarding custody to husband, at expense of attachment children had formed with both parents was not abuse of discretion; highlighting wife's role in most recent, interim custody arrangement could be contrary to children's best interests. D.C. Code 1981, § 16-914(a)(4). *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Trial court properly considered relationship of husband and wife in determining child custody and did not focus inordinately on negative aspects of wife's relationship with husband; trial court's discussion of behavior by wife toward husband both before and after parties' separation as causing court to fear that wife would limit children's contact with husband regardless of any court order, and court's finding that wife was much more emotionally volatile and unstable than husband was relevant to issue of whether parent was willing and able to promote positive relationship between children and other parent and to children's best interests. D.C. Code 1981, § 16-914(a)(3). *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

In determining child custody, trial court was required to deal with truth or falsity of claimed assaults by husband on wife and with attendant circumstances and could not instead essentially lay aside allegations as chapter in parties' relationship now closed by final separation;

court's treatment of allegations left unresolved whether acts occurred and their relevance to factors that judge herself considered important in custody decision as to issue of fitness of husband to assume custody and husband's anticipated willingness to allow wife generous involvement in children's lives. D.C. Code 1981, § 16-914(a)(5). *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Interaction of parents with each other can relate directly to children's best interests, for purposes of child custody award, especially as concerns factor that is paramount for judge, i.e., which parent would predictably cooperate most in according the other regular and substantial role in children's life. D.C. Code 1981, § 16-914(a)(3). *Prost v. Greene*, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

In divorce proceeding, trial court abused its discretion in awarding custody to husband without hearing evidence bearing upon needs and adjustment of the child and without making findings on most of the relevant statutory factors. D.C. Code 1981, § 16-914(a). *Fitzgerald v. Fitzgerald*, 464 A.2d 110, 1983 D.C. App. LEXIS 433 (1983).

In proceeding in which former husband sought to modify divorce decree, trial court's determination, which was based on evaluations by psychiatrist and intrafamily and neglect branch, interviews with children, and testimony and arguments of counsel for both husband and wife, who, pursuant to agreement entered into by parties, had previously had custody of children, best interests of minor children would be better served by awarding custody to husband was not abuse of discretion. *Ross v. Ross*, 339 A.2d 447, 1975 D.C. App. LEXIS 398 (1975).

In view of paramount consideration of welfare of minor children in custody cases, continuation of custody of three minor children in divorced father, instead of award of custody to mother, who continued to reside in her parent's home without gainful employment, had made no plans to move to an environment better suited to healthy development of the children, and who, in opinion of trial court, continued to exhibit same attitudes which had been deemed to have a deleterious effect upon the children, was not error. *Monacelli v. Monacelli*, 296 A.2d 445, 1972 D.C. App. LEXIS 277 (1972).

Evidence established that change in custody provisions of divorce decree by awarding custody of two sons to father and permitting mother to retain custody of two daughters was based on mother's misconduct in light of well-being of children and was not based on desire to

punish mother. *Kahn v. Kahn*, 252 A.2d 901, 1969 D.C. App. LEXIS 241 (App. 1969).

#### **In camera interviews.**

Although trial judges are permitted, in certain circumstances, to interview children in camera out of the glare and pressure of the courtroom, because the interview is still part of a court proceeding it must be recorded, and the record must be made available to the parties and the appellate court. *N.D. McN. v. R.J.H.*, 979 A.2d 1195, 2009 D.C. App. LEXIS 380 (2009).

#### **In general.**

District Court may, in its discretion, reduce or cancel, at a later date, periodic installments of payments for maintenance as of date when application for such relief is made. *Fioravanti v. Fioravanti*, 231 F.2d 776, 1956 U.S. App. LEXIS 3466 (C.A.D.C. 1956).

Where divorce judgment provides for alimony, court has jurisdiction to grant or deny motion for increase in amount, even though award of alimony is based on agreement of parties. *Rogers v. Rogers*, 203 F.2d 61, 1953 U.S. App. LEXIS 3334 (C.A.D.C. 1953).

District of Columbia Supreme Court, after rendering divorce decree, retained jurisdiction, with authority to enter further orders respecting custody of child. D.C. Code 1929, T. 14, §§ 72, 73. *Davis v. Davis*, 57 F.2d 414, 1932 U.S. App. LEXIS 3980 (1932).

A failure by the trial court to make findings as to each of the relevant statutory factors for determining child custody requires remand. *Dumas v. Woods*, 914 A.2d 676, 2007 D.C. App. LEXIS 1 (2007).

Trial court abused its discretion in awarding wife alimony that was to be reduced automatically upon the happening of certain events, as trial court was required to make alimony award a permanent, fixed amount for an indefinite period of time under statute governing alimony, and thus, court could not build in reductions based on speculation as to the parties' respective needs and abilities to pay in the future. D.C. Code 1981, §§ 16-912, 16-914. *Joel v. Joel*, 559 A.2d 769, 1989 D.C. App. LEXIS 112 (1989).

After support order has been entered, the family division of the superior court retains jurisdiction over matters so that it may modify the original order in the event a party is able to show a substantial change in circumstances. D.C. Code § 16-914. *Smith v. Smith*, 344 A.2d 221, 1975 D.C. App. LEXIS 243 (1975).

Imposition of time limitation upon alimony payments was improper. D.C. Code §§ 16-912, 16-914. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

Trial court in a proceeding for divorce has continuing jurisdiction over issues of custody and child support even if divorce decree is silent

as to custody or child support. D.C. Code § 16-914. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

If alimony award becomes unduly burdensome, husband is entitled to seek suitable adjustment by making proper showing of change in circumstances. *Butts v. Butts*, 192 A.2d 294, 1963 D.C. App. LEXIS 254 (App. 1963).

Although both subsection (a) and § 30-504 allow for modification of custody and support decrees ad infinitum, these sections do not permit court to hear custody and support cases over which it has no personal jurisdiction. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

#### **Intrafamily offenses.**

Where the issue of a parent's intrafamily offense is a critical one in making a custody award, a trial court must explicate its reasoning in considerable detail. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

A trial court must expressly weigh a parent's intrafamily offense in making a custody award. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

A judicial officer must exercise considerable caution before granting custody or visitation rights to a parent who has committed an intrafamily offense. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

Evidence supported a finding that mother committed an intrafamily offense, as a factor for trial court to consider in determining the care and custody of child; father's wife had filed a petition for a peace order, seeking protection from mother, in a court in Maryland, the court in Maryland found by clear and convincing evidence that mother had committed acts that placed wife in fear of imminent serious bodily harm, and wife was married to a person, specifically father, who had been in a romantic relationship with the offender, specifically mother. *Woods v. Dumas*, 136 WLR 2025 (Super. Ct. 2007).

#### **Joint custody.**

Parents' inability to cooperate or communicate does not preclude award of joint custody, either under amendments to custody statute or under earlier Taylor decision enumerating factors to be considered in determining whether to award joint custody. D.C. Code 1981, §§ 16-911(a)(5)(A-Q), 16-914(a)(3)(A-Q). *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

#### **Modification.**

Where husband alleged that divorce judgment should be set aside and that he should be granted divorce on ground of wife's alleged adultery and on ground that she had originally testified falsely as to what her monthly earnings were and that alimony awarded was excessive, court could in its discretion, if it found



facts as alleged, reduce alimony from and after date of the answer. *Dausuel v. Dausuel*, 195 F.2d 774, 1952 U.S. App. LEXIS 3021 (C.A.D.C. 1952).

In proceedings on motion by wife for amendment of order awarding permanent custody of minor child to husband subject to wife's right to see child at reasonable times, by giving wife partial custody and making more certain the times when she might visit child, there was no evidence tending to show any change in circumstances which would warrant change of custodial order. *Dawn v. Dawn*, 194 F.2d 895, 1952 U.S. App. LEXIS 2865 (C.A.D.C. 1952).

Where decree of divorce awarded husband permanent custody of minor child subject to wife's right to see child at reasonable times, and there was no evidence on motion by wife for modification of order tending to show change in circumstances which existed at time of entry of custodial order, order of modification which gave custody of child to mother during two week-ends each month with permission to take her anywhere within metropolitan area of District of Columbia was improper. *Dawn v. Dawn*, 194 F.2d 895, 1952 U.S. App. LEXIS 2865 (C.A.D.C. 1952).

A divorce decree which awards permanent custody of child to one of parties is res judicata as to question of custody at that time, and unless showing is made that circumstances and conditions have so changed that best interests of child would be served by amending custodial order, such order cannot be amended. *Dawn v. Dawn*, 194 F.2d 895, 1952 U.S. App. LEXIS 2865 (C.A.D.C. 1952).

Repeated efforts by divorced parents to change the provisions for the custody of a child are very detrimental to the building of the child's character, and will be looked on with disfavor, unless the change is sought for grave reasons. *Snow v. Snow*, 280 F. 1013, 1922 U.S. App. LEXIS 1903 (1922).

Changed circumstances warranted modification of parties' settlement agreement, whereby parties had agreed to joint legal and physical custody, so as to award sole legal and physical custody to ex-wife; parties had entered into the agreement expecting that its provisions and the divorce would reduce hostility between them, but the conflict between the parties had been continuous, cumulative and had escalated since the execution of the agreement to the extent that they were unable to be in same room with one another, and it was in best interest of the children that joint custody arrangement be modified in favor of sole legal and physical custody by ex-wife. *Wilson v. Craig*, 987 A.2d 1160, 2010 D.C. App. LEXIS 27 (2010).

While party seeking modification of custody or visitation award must always prove by a preponderance of evidence that there has been a substantial and material change in circum-

stances and that the modification is in the best interest of the child, once such a finding is made in any case in which a prior finding of an intrafamily offense has occurred, that prior finding shifts burden to perpetrator of offense to prove that the visitation or custody arrangement will not endanger the child or impair the child's emotional development; a history of domestic abuse will always be relevant at every custody or visitation proceeding in which the abuser is involved. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

Child custody statute and statute governing protection orders do not place a time limit on the consideration of an intrafamily offense, or distinguish between an intrafamily offense committed prior to or after the issuance of an initial custody and visitation order, or require a finding that a new intrafamily offense has been committed, when considering requests for modification of prior court orders; instead, statutes command courts to focus on the best interest of the child principle, and a parent's intrafamily offense in making decisions about custody and visitation. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

Both parents were not required to be present and able to testify at hearing to determine best interests of child, and, thus, father could not use his decision not to participate in custody hearings as basis for disturbing award of custody to mother. *Mitchell v. Hughes*, 755 A.2d 456, 2000 D.C. App. LEXIS 155 (2000).

Trial judge had authority to terminate ex-husband's obligation to pay alimony to ex-wife on the basis of a change in circumstances, namely that ex-wife was now wealthier than ex-husband; there was nothing in equitable distribution statutes to suggest that an award of permanent alimony could not be terminated if the circumstances giving rise to the need for alimony no longer exist. D.C. Code 1981, §§ 16-912, 16-914(a). *DeGrazia v. DeGrazia*, 741 A.2d 1057, 1999 D.C. App. LEXIS 290 (1999).

Trial court had authority to modify amended final order so as to end former husband's support obligation once amount of former wife's mortgage was paid given exception to general rule against revisiting final orders for divorce order, order made clear, especially through express incorporation of transcripts, that situation was an evolving one and material beyond actual order was part of order, and final modification was consistent with intent of order being modified, which imposed support obligation to ensure mortgage was paid. *Smith v. Smith*, 673 A.2d 1281, 1996 D.C. App. LEXIS 56 (1996).

In ruling on motion to modify custody provisions of parties' voluntary separation agreement, where agreement has been incorporated but not merged into divorce decree, court must apply Rice /Cooper test, which allows for such

modification only if court finds that (1) there has been change in circumstances which was not foreseen at the time agreement was entered, and (2) the change is both substantial and material to welfare and best interest of children; court is not permitted to substitute its consideration of the factors set forth in statute regarding "best interest of the child" analysis. D.C. Code 1981, § 16-911(a). *Foster-Gross v. Puente*, 656 A.2d 733, 1995 D.C. App. LEXIS 70 (1995).

Trial court did not have authority to order prospective decrease in wife's alimony award in anticipation of wife completing law school. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Former wife was not entitled to postdivorce order requiring former husband to pay alimony, where divorce decree relieved both parties from any obligation to pay support or alimony until further order of the court based upon changed circumstances, but former wife failed to establish sufficient changed circumstances warranting such an order. *Carter v. Carter*, 473 A.2d 395, 1984 D.C. App. LEXIS 353 (1984).

In divorce proceeding, it was an abuse of discretion to grant former wife modification of custody arrangements so that children divided their time equally between each parent where there was no indication in the record and no finding by the trial court that the children's interests were adversely affected either by the original visitation agreement or by alleged change in circumstances, which amounted to slight reduction in former wife's visitation, and there was no evidence to support conclusion that 5% division of children's time was calculated to serve their best interests. D.C. Code SCR, Dom.Rel.Rule 52(a). *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Former wife seeking to modify prior child custody arrangement failed to meet her burden of proving that change in circumstances alleged was material where only change since entry of divorce decree that was alleged was minimal reduction in visitation well within range contemplated by the divorce decree. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Courts have continuing jurisdiction in divorce proceeding to modify custody arrangements in the best interests of the children. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Modification of custody arrangements must be based upon change in circumstances which occurred after divorce decree was entered and were not contemplated by parties at the time. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Any change in custody arrangements justifying amendment of divorce decree must be both substantial and material to child's welfare and

best interests. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Actions for modification of custody arrangements must not be used as procedural devices for reviewing equities of prior divorce decree. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

Modification of child custody provisions of divorce decree must be reasonably calculated to promote child's best interests and welfare, which is the controlling consideration. *Rice v. Rice*, 415 A.2d 1378, 1980 D.C. App. LEXIS 308 (1980).

While trial court has broad discretion in making original award of alimony or support, its discretion is limited when modifying such order by requirement that modification be anchored in original decree and reflect only changes since that decree. D.C. Code § 16-916(a). *Tennyson v. Tennyson*, 381 A.2d 264, 1977 D.C. App. LEXIS 309 (1977).

Fact that husband initiated and obtained divorce between parties was not a controlling factor on question of later termination of alimony to wife. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

A former husband seeking to terminate alimony payments on basis of his former wife's living with an individual and having sexual relations with him must meet his burden of showing how cohabitation has in any way affected financial situation of parties. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

In proceeding seeking modification of support decree, trial court did not abuse its discretion by refusing to modify alimony obligation of husband whose income was decreased as result of his election to voluntarily retire. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

If husband's inability to pay alimony or child support is self-inflicted or voluntary, it will not constitute ground for reduction in future payments. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

Trial court has continuing jurisdiction in divorce action to change custody of the children if the best interest of the children warrants it. *Brown v. Brown*, 260 A.2d 675, 1970 D.C. App. LEXIS 195 (App. 1970).

Transfer of custody of children to divorced husband was not warranted where there had been no change of circumstances not contemplated by parties at time of separation agreement embodying custody arrangement which had proven to be in best interest of children, though husband had de facto custody resulting from children attending boarding school in area nine months of year. *McGehee v. Maxfield*, 256 A.2d 576, 1969 D.C. App. LEXIS 302 (App. 1969).



Alienation of children's affection from other parent and refusal of custodial parent to comply with specific provisions of divorce decree as to visitation rights are factors which may be properly considered in determining whether change of custody is for best interests of children. *Kahn v. Kahn*, 252 A.2d 901, 1969 D.C. App. LEXIS 241 (App. 1969).

Conduct of mother in deliberately and systematically thwarting and hindering father in his attempts to enjoy visitation rights for purpose of negotiating sizeable lump-sum settlement in her favor, attempts to win the children away from father's affection and attempts, without justification to alienate children from paternal grandmother, constituted sufficient change of circumstances to warrant court in reviewing custody provisions of divorce decree to make changes required for present welfare of children. *Kahn v. Kahn*, 252 A.2d 901, 1969 D.C. App. LEXIS 241 (App. 1969).

### Motions.

Trial court was not required to rule on ex-wife's motion to disqualify ex-husband's counsel before deciding the merits of the litigation, namely ex-wife's motion to compel ex-husband's compliance with custody agreement; there was no clear case law or court rule requiring a judge to rule on motions in a certain order, and even if the court had ruled on motion to disqualify first, and had in fact disqualified ex-husband's counsel from further representation, at most what would have happened was that the parties would have re-filed their motions and supporting evidence, and the court again would have had to rule on the motion to compel in light of the new filings, and ex-wife did not seek an expedited decision on the motion for disqualification. *Rales v. Rales*, 908 A.2d 64, 2006 D.C. App. LEXIS 531 (2006).

Former husband's motion to reduce support obligations ordered in divorce decree gave trial court sufficient notice that he might be unable to meet his obligations under order staying prison sentence for contempt of the support obligation and requiring that he pay a certain amount of the arrearages, and was in effect a request for relief from terms of the stay; therefore, finding that former husband had not proffered any defense or justification for his violation of the stay was plainly wrong and without evidence to support it, and thus trial court abused its discretion in revoking the stay and committing former husband to jail. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916, 17-305(a). *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

### Orders.

Trial court's oral findings and written order, considered in combination, adequately discussed the specific factors and findings which

justified trial court's custody order, giving physical custody of the child to mother each week from Sunday night to Thursday after school and every other weekend, and there was ample evidence in the record to justify the court's conclusion that this arrangement for physical custody was in the best interest of the child; the arrangement ordered by court provided for frequent and continuing contact between each parent and child and for sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between child and parents. *Hutchins v. Compton*, 917 A.2d 680, 2007 D.C. App. LEXIS 90 (2007).

In absence of an appeal from the divorce decree, provision of the decree, providing that both parties be relieved from any obligation to pay support or alimony until further order of the court based upon changed circumstances, became the law of the case for purposes of subsequent hearings on changed circumstances. *Carter v. Carter*, 473 A.2d 395, 1984 D.C. App. LEXIS 353 (1984).

It would have been better practice for court to specify how much of amount awarded was alimony for wife, but failure to do so was not fatal. D.C. Code §§ 16-914, 30-301 et seq.; D.C. Code SCR, Dom.Rel. Rules 60, 401(b)(4); Domestic Relations Law N.Y. § 30 et seq. *Mitchell v. Mitchell*, 310 A.2d 837, 1973 D.C. App. LEXIS 384 (1973).

Trial court's order setting a date for further consideration of the matter of custody conferred no greater right upon divorced mother, who subsequently sought to obtain custody, than she already had, as case always remained open with respect to custody. D.C. Code § 16-914. *Monacelli v. Monacelli*, 296 A.2d 445, 1972 D.C. App. LEXIS 277 (1972).

In divorce action, statute did not require trial court to make order of custody of parties' children even though trial court did have jurisdiction to enter such an order. D.C. Code § 16-914. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

### Parties.

Statutes governing family court's jurisdiction of actions seeking custody of minor children contemplate an award of custody only as between parents who are parties to a divorce proceeding. *K.R. v. C.N.*, 969 A.2d 257, 2009 D.C. App. LEXIS 62 (2009).

Divorce statutes contemplate an award of child custody only as between parents who are parties to a divorce proceeding. D.C. Code 1981, §§ 11-1101, 16-911, 16-914. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

In divorce proceedings, trial court did not have authority under divorce statutes to remove child custody from mother and award permanent custody to children's maternal grandmother, where grandmother was a third

party to the proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

### **Presumptions and burden of proof.**

An adjudicated intrafamily offender who is seeking custody has the burden of proving that custody will not endanger the child or significantly impair the child's emotional development. P.F. v. N.C., 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

### **Remand.**

Findings required upon a showing of intrafamily offenses committed by a contestant for child custody need not be explicit; reversing and remanding the case for an explicit finding where the record plainly supports the conclusion that the required findings were actually, though implicitly, made would be a waste of judicial resources and would elevate form over substance. Jordan v. Jordan, 14 A.3d 1136, 2011 D.C. App. LEXIS 109 (2011).

Court of Appeals could not say with confidence that trial court, in awarding physical and legal custody to father who had been found to have committed two intrafamily offenses against mother, gave requisite consideration to substantial connection between presence of spousal abuse and determination as to which parent should be awarded custody, and thus remand for further consideration would be ordered, even though award of custody to father was not an impermissible outcome; there was little explicit discussion in trial court's order regarding role that father's abusive conduct played in custody calculus, and father's conduct raised particular concern about children's well being. P.F. v. N.C., 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

### **Retroactive modification.**

Under statute, the United States District Court for the District of Columbia cannot modify or remit installments of alimony which have become due. D.C. Code 1940, § 16-413. Kephart v. Kephart, 193 F.2d 677, 1951 U.S. App. LEXIS 3511 (C.A.D.C. 1951).

Generally, trial judge cannot modify court-ordered installments of alimony or support after they have become due. Steadman v. Steadman, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Orders increasing support or alimony may, in discretion of trial court, be made retroactive to date when application for such relief is made. Trezevant v. Trezevant, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

There can be no modification of installments of alimony or support after they have become due under a previously entered decree. Trezevant v. Trezevant, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

### **Review.**

Remand for findings that would allow mean-

ingful appellate review was required on mother's appeal of trial court's award of legal and physical custody of 13-year-old child to biological father, where trial court did not make findings on any of the statutory factors for determining child custody, and trial court did not explain why it rejected father's petition for joint custody, why it rejected mother's agreement, at custody hearing, to joint custody, why it did not follow home survey's recommendation to award joint legal custody and to keep primary physical custody with mother, and why trial court made an apparent about-face on issue of joint legal custody after docket entry, which documented the custody hearing, stated that joint legal custody would be awarded, with primary physical custody awarded to father. Dumas v. Woods, 914 A.2d 676, 2007 D.C. App. LEXIS 1 (2007).

Dismissal of husband's appeal of order allowing wife to move with child to another state and suspending husband's visitation with child was warranted for want of prosecution; both parties had proceeded as though husband's appeal of that order did not exist, in their appellate briefs each party identified matters before Court of Appeals as being appeals from two other orders, and, at oral argument, husband's counsel was unaware that appeal from order allowing wife to relocate with child and suspending husband's visitation had been taken. Sampson v. Johnson, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

An order denying a parent the right to visit his child is appealable, notwithstanding that proceedings to terminate parental rights have not been instituted. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Trial court determinations of custody, child support, and visitation rights are subject to reversal only for clear abuse of discretion. Mitchell v. Hughes, 755 A.2d 456, 2000 D.C. App. LEXIS 155 (2000).

Remand for new determination of alimony was proper remedy, when trial court improperly built in reductions to award of alimony, rather than simply eliminating the reductions, which were based on consideration of wife's potential employment and anticipated income from wife's share of marital assets not yet available to her, as such considerations were relevant to setting an appropriate level of alimony. D.C. Code 1981, §§ 16-912, 16-914. Joel v. Joel, 559 A.2d 769, 1989 D.C. App. LEXIS 112 (1989).

On appeal from trial court's ruling that it lacked jurisdiction to consider wife's motion to reduce support arrearages to judgment, husband's arguments which were not raised initially at trial could not be considered. D.C. Code 1981, § 11-721(a)(1). Clark v. Clark, 485 A.2d 621, 1984 D.C. App. LEXIS 578 (1984).



Where imposition of erroneous time limitation on alimony was a product of court's consideration of wife's prospective economic condition, appellate court would not simply remove time limitation, but would remand case for determination as to amount of permanent alimony, if any, to which wife was entitled based upon consideration of all relevant factors. D.C. Code §§ 16-912, 16-914. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

**Sufficiency of evidence.**

In child custody proceedings involving a finding that father had committed an intrafamily offense, trial court's failure to make express findings that father did not pose a danger to mother and the children, and that joint custody would not significantly impair the children's emotional development, was not grounds for reversal of award of joint custody, where the court gave full consideration to the evidence of intrafamily offenses and made the required findings implicitly when it determined that father was a fit parent and that joint custody was in the best interests of the children. *Jordan v. Jordan*, 14 A.3d 1136, 2011 D.C. App. LEXIS 109 (2011).

In child custody proceedings involving a finding that father had committed an intrafamily offense, evidence supported trial court's implicit findings that father did not pose a danger to mother and the children, and that joint custody would not significantly impair the children's emotional development, thus supporting award of joint custody; mental-health expert determined that father's past instances of violence were situational and did not predict future violence, instances of past violence did not result in injury and would not recur if the parties were not living together, and expert

recommended award of joint custody. *Jordan v. Jordan*, 14 A.3d 1136, 2011 D.C. App. LEXIS 109 (2011).

Testimony of father, as the offering witness, was not sufficient in child custody proceedings to support admission, under business records exception to hearsay rule, of client status report from a domestic violence prevention training program in which father participated; father had no personal knowledge and could not testify about whether the document was authentic or made in the ordinary course of business. *K.R. v. C.N.*, 969 A.2d 257, 2009 D.C. App. LEXIS 62 (2009).

Record did not support trial court's finding that methodology of guardian ad litem (GAL) in arriving at a recommendation that mother be awarded custody of children was based on simplistic methodology of allocating each statutory custody factor and then concluding that party with highest number of allocations should be granted custody; GAL made clear in his report that his methodology was entirely different, stating in part that his conclusions as to each factor was not meant as a simple score-keeping exercise, and nothing in body of report suggested that GAL failed to adhere to methodology that he described. *P.F. v. N.C.*, 953 A.2d 1107, 2008 D.C. App. LEXIS 368 (2008).

**Validity.**

Review of child neglect statute for constitutionality did not have to be as searching as for criminal statutes, despite contention that result of application was as severe as criminal penalty, where judge did not give permanent custody of child to other parent, placement was subject to continual review, and no criminal charges were filed. D.C. Code 1981, § 16-914. *In re J.A.*, 601 A.2d 69, 1991 D.C. App. LEXIS 349 (1991).

**§ 16-914.01. Retention of jurisdiction as to alimony, custody of children, and child support.**

After the issuance of a judgment, decree, or order granting custody, child support, or alimony, the Court retains jurisdiction for the entry of future orders modifying or terminating the initial judgment, decree, or order to the extent the retention of jurisdiction does not contravene other statutory provisions.

(Oct. 19, 2002, D.C. Law 14-207, § 2(j), 49 DCR 7827.)

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**CASE NOTES**

**Age of majority.**

Trial court had the authority to enter a civil contempt order against father due to his non-

payment of child support, even though the parties' children had all reached the age of majority; the court had continuing jurisdiction

to enforce a support order, and emancipation of the child did not dilute the court's authority to enforce arrearages incurred before emancipa-

tion. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

**§ 16-914.02. Child custody and visitation rights of parents during deployment for military service.**

(a)(1) A deploying parent may file a motion with the court to request an expedited hearing for the purpose of obtaining a temporary child custody or visitation order when no court order exists as to the custody or visitation of the child of the deploying parent.

(2) A deploying parent, or a non-deploying parent where the deploying parent is currently on deployment or has received a deployment order, may file a motion with the court to request a temporary child custody or visitation order modifying the terms of an existing child custody order or visitation order.

(b)(1) Upon a motion as provided under subsection (a) of this section, the court may issue a temporary order to establish the terms for custody and visitation of the child of the deploying parent or modify the terms of an existing custody or visitation order for the child of the deploying parent to make reasonable accommodation for the deployment.

(2) A temporary order issued pursuant to this subsection shall state:

(A) That the basis of the order is the deployment of a military parent; and

(B) That the temporary order shall terminate and the permanent order shall resume within 10 days after notification of the deploying parent's ability to resume custody or visitation unless the court finds that resumption of the custody or visitation order in effect before deployment is no longer in the child's best interest.

(3) A temporary order issued pursuant to this subsection may require:

(A) The non-deploying parent to reasonably accommodate the leave schedule of the deploying parent;

(B) The non-deploying parent to facilitate opportunities for telephonic communication, electronic mail, or other electronic communication between the deploying parent and child during the deployment period; and

(C) The deploying parent to provide the non-deploying parent with timely notice of leave of absence, unless the leave schedule of the deploying parent is changed without sufficient advance notice to allow the deploying parent to give timely notice to the non-deploying parent, in which case neither the court nor the non-deploying parent shall use the untimely notice to prevent contact between the deploying parent and the child or use the untimely notice as a basis in requesting or issuing a permanent order modifying an existing custody or visitation arrangement.

(4)(A) Upon a motion of a deploying parent, or upon motion of a family member of the deploying parent with the consent of the deploying parent, the court may issue a temporary order to delegate all or a portion of the deploying parent's visitation rights to a family member with a close and substantial relationship to the child for the duration of the deployment if in the best interest of the child; provided, that:



(i) The delegation of visitation rights or access to the child shall not create an entitlement or standing to assert separate rights to a liberty interest in the care and custody of the child for a person other than a parent; and

(ii) A delegation of visitation rights or access to the child shall not exceed the visitation time granted to the deploying parent.

(B) A temporary order delegating all or a portion of a deploying parent's visitation rights under this paragraph shall terminate by operation of law in accordance with paragraph (2)(B) of this subsection.

(C) A person to whom visitation rights have been delegated by a temporary order issued under this paragraph shall have full legal standing to enforce that temporary order.

(5) In issuing a temporary order under this subsection, the court shall ensure that the parties are advised of the possible availability of a modification of child support, and shall provide notice to the parties of how such a modification may be obtained. The court may also decide the issue of child support, in accordance with the child support guideline in § 16-916.01, during the hearing on the motion for a temporary order under this section.

(6) For the purposes of this subsection, the non-deploying parent shall have the burden of proving that resumption of the permanent order is no longer in the child's best interest.

(c) The court shall not issue a permanent order modifying the terms of an existing custody or visitation order until 90 days after the termination of the deployment of a military parent. The court shall not consider the activation or deployment of a deploying parent as the sole factor in the court's decision of whether or not to grant or deny a petition for custody or visitation, and neither deployment nor the potential for future deployment of a military parent shall, by itself, be regarded as a material change in the circumstances of any existing custody or visitation order, or against the best interests of the child, for the court to issue a permanent order modifying the terms of an existing custody or visitation order.

(d) The court, in any child custody or visitation proceeding between either 2 deploying parents or a deploying parent and a non-deploying parent, shall allow any deploying parent to present testimony or evidence relevant to the custody or visitation proceedings either by affidavit or electronically when deployment precludes the personal appearance of the deploying parent.

(e) For the purposes of this section, the term:

(1) "Activation" means the extension of United States Armed Forces to active military service of the United States. Activation does not include National Guard or Reserve annual training, inactive duty, drill weekends, or active duty within the District.

(2) "Deploying parent" means a military parent who is on deployment or has received mandatory orders from military leadership to deploy with the United States Armed Forces.

(3) "Deployment" means the compliance with military orders received by any member of the United States Armed Forces for active service, including service for combat operations, contingency operations, peacekeeping operations, temporary duty, and remote tours of duty.

(4) "Military parent" means a member of the United States Armed Forces who is the parent of a minor child, including the biological, adoptive, or legal parent, whose parental rights have not been terminated or transferred to the District or another person through juvenile proceedings.

(5) "Non-deploying parent" means a parent who is not a member of the United States Armed Forces, or is a military parent who is currently neither a deploying parent nor a parent that has received an imminent deployment or activation order.

(6) "United States Armed Forces" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other Reserve component thereof.

(Mar. 14, 2012, D.C. Law 19-110, § 2(b), 59 DCR 449.)

**Legislative history of Law 19-110.** — Law 19-110, the "Military Parents' Child Custody and Visitation Rights Act of 2012", was introduced in Council and assigned Bill No. 19-332, which was referred to the Committee on the Judiciary. The Bill was adopted on first and

second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-285 and transmitted to both Houses of Congress for its review. D.C. Law 19-110 became effective on March 14, 2012.

## § 16-915. Change of name on divorce.

Upon divorce from the bond of marriage, the court shall, on request of a party who assumed a new name on marriage and desires to discontinue using it, state in the decree of divorce either the birth-given or other previous name which such person desires to use.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 562; Oct. 1, 1976, D.C. Law 1-87, § 18, 23 DCR 2544.)

**Prior Codifications.** — 1981 Ed., § 16-915. 1973 Ed., § 16-915.

**Legislative history of Law 1-87.** — For

legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-911.

### CASE NOTES

#### In general.

Statute, which states that court shall, on request of party who assumed new name on marriage and desires to discontinue using it, state in divorce decree either birth-given or other previous name that such person desires to use, provides efficient procedure through which a woman may exercise her common-law right to change her name back to her maiden or previously used name at time of divorce and does not leave decision whether divorce decree

should authorize restoration of prior name to discretion of the trial court. D.C. Code § 16-915. *Brown v. Brown*, 384 A.2d 632, 1977 D.C. App. LEXIS 480 (1977).

In case of a married woman, even if she changes her name upon marriage, there is nothing which forbids her from changing it back to her maiden name, as long as she does not do so for criminal or fraudulent purposes. D.C. Code § 16-915. *Brown v. Brown*, 384 A.2d 632, 1977 D.C. App. LEXIS 480 (1977).



**§ 16-916. Maintenance of spouse [or domestic partner] and minor children; maintenance of former spouse [or domestic partner]; maintenance of minor children; enforcement.**

(a) Whenever a spouse or domestic partner shall fail or refuse to maintain his or her needy spouse, domestic partner, minor children, or both, although able to do so, or whenever any parent shall fail or refuse to maintain his or her children by a marriage since dissolved, although able to do so, the court, upon proper application and upon a showing of genuine need of a spouse or domestic partner, may decree, pendente lite and permanently, that such spouse or domestic partner shall pay reasonable sums periodically for the support of such needy spouse or domestic partner and of the children, or such children, as the case may be, and the court may decree that he or she pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former spouse or domestic partner has obtained a foreign ex parte divorce or termination of the domestic partnership, in accordance with § 32-702(d), the court thereafter, on application of the other former spouse or domestic partner and with personal service of process upon such former spouse or domestic partner in the District of Columbia, may decree that he or she shall pay him or her reasonable sums periodically for his or her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(c) When a father or mother fails to maintain his or her minor child, the Court may decree that the father or mother pay reasonable sums periodically for the support and maintenance of the child, including health insurance coverage and cash medical support, and may decree that the father or mother pay Court costs, including counsel fees, to enable plaintiff to conduct the cases.

(c-1) A support order entered under this section shall contain terms providing for the payment of medical expenses for each child included in the support order, whether or not health insurance coverage is available to pay for those expenses. The court may order either or both parents to provide health insurance coverage, cash medical support, or both, consistent with § 16-916.01.

(c-2) In all cases where accessible health insurance coverage is available to either or both parents at reasonable cost, the court shall order either or both parents to provide the health insurance coverage, consistent with § 16-916.01.

(c-3) In selecting among health insurance coverage options, the court shall consider, at a minimum, the cost, comprehensiveness, and accessibility of all health insurance coverage options available to either parent.

(c-3A) In cases where accessible health insurance coverage is not available to either parent at reasonable cost, or where the medical expenses of a child are not fully covered by health insurance, the court shall order either or both parents to pay cash medical support consistent with § 16-916.01.

(c-3B) For the purposes of this section, health insurance coverage shall be considered reasonable in cost if the cost to the obligated parent of providing

coverage for the children subject to the support order pursuant to § 16-916.01(i)(3) does not exceed 5% of the parent's gross income.

(c-3C) For the purposes of this section, health insurance coverage shall be considered accessible if, based on the work history of the parent providing the coverage, it will be available for at least one year, and if the child lives within the geographic area covered by the plan or within 30 minutes or 30 miles of primary care services.

(c-4) All support orders subject to enforcement by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), shall require the payment of support in equal monthly amounts on the first day of each month. If a support order does not require the payment of support in this manner and the support order is or becomes subject to enforcement by the IV-D agency, the IV-D agency may direct the payor, upon notice to both parents, to pay the support in equal monthly amounts on the first day of each month; provided, that the total of the monthly amounts required to be paid in one year cumulatively equals the total support required to be paid annually under the support order.

(d) The court may enforce any decree entered under this section in the same manner as is provided in section 16-911.

(e)(1) In order to secure payment of overdue support as defined in section 466(e) of the Social Security Act approved August 16, 1984 (98 Stat. 1306; 42 U.S.C. 666(e)), after providing notice under subsection (b) of this section, the Court shall, where appropriate, require the parent to post security, bond, or give some other guarantee.

(2) The Court shall provide advance notice to the parent regarding the delinquency of the support payment and the requirement of posting security, bond, or guarantee. The notice shall inform the parent of the parent's rights and the methods available for contesting the impending action.

(3) Where the Clerk of the Court determines that a parent is delinquent in child support payments in an amount equal to at least 60 days of child support payments, the Clerk of the Court shall notify the Mayor of the parent's name, social security number, court docket number, and the amount of the support payment delinquency.

(f) Repealed.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 562; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89-217, § 3; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(2)(A); Oct. 1, 1976, D.C. Law 1-87, § 19(a)-(c), 23 DCR 2544; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(4), 33 DCR 6710; May 10, 1989, D.C. Law 7-231, § 24, 36 DCR 492; Mar. 16, 1995, D.C. Law 10-223, § 2(e), 41 DCR 8051; Feb. 13, 1996, D.C. Law 11-87, § 2, 42 DCR 6767; Apr. 3, 2001, D.C. Law 13-269, § 106(g), 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 202(b), 51 DCR 1615; Apr. 4, 2006, D.C. Law 16-79, § 4(g), 53 DCR 1035; May 12, 2006, D.C. Law 16-100, § 2(g), 53 DCR 1886; June 22, 2006, D.C. Law 16-138, § 2(b), 53 DCR 3650; Mar. 20, 2008, D.C. Law 17-128, § 2(c), 55 DCR 1525; Sept. 12, 2008, D.C. Law 17-231, § 20(e), 55 DCR 6758.)



**Cross references.** — Child support enforcement, withholding of income, see § 46-207.

**Prior Codifications.** — 1981 Ed., § 16-916. 1973 Ed., § 16-916.

**Effect of amendments.** — D.C. Law 13-269, in subsec. (a), inserted “that either or both parents shall pay for the unreimbursed medical expenses of the child, and that a parent shall obtain medical insurance for the child whenever that insurance is available at a reasonable cost,” preceding “and the court may decree”; and, in subsec. (c), inserted “that either or both parents shall pay for the unreimbursed medical expenses of the child,” preceding “that the parent obtain medical insurance”.

D.C. Law 15-130, in subsec. (a), deleted “that either or both parents shall pay for the unreimbursed medical expenses of the child, and that a parent shall obtain medical insurance for the child whenever that insurance is available at a reasonable cost,” following “as the case may be,”; in subsec. (c), deleted “that either or both parents shall pay for the unreimbursed medical expenses of the child, and that a parent shall obtain medical insurance for the child whenever that insurance is available at a reasonable cost,” following “maintenance of the child,”; and added subsecs. (c-1), (c-2), and (c-3).

D.C. Law 16-79 rewrote subsecs. (a) and (b).

D.C. Law 16-100 added subsec. (c-4).

D.C. Law 16-138 repealed subsec. (f), which had read as follows: “(f) Any court order that establishes a retroactive amount of child support or a judgment for unreimbursed public assistance shall be established in accordance with section 16-916.01 and shall take into consideration either the current earnings and income of the noncustodial parent at the time the order is set or the earnings and income of the noncustodial parent during the period for which retroactive child support or unreimbursed public assistance is sought. To overcome the presumptive support amount, the court may consider the obligor’s ability to pay back support and concurrently maintain current payments.”

D.C. Law 17-128 rewrote subsecs. (c), (c-1), (c-2), and (c-3) and added subsecs. (c-3A), (c-3B), and (c-3C).

D.C. Law 17-231, in subsec. (b), substituted “termination of the domestic partnership, in accordance with § 32-702(d),” for “termination of the domestic partnership.”

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(i) of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

For temporary (225 day) amendment of section, see § 2(g) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary amendment of section, see § 5(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(i) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(i) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(i) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(i) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(i) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(i) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(g) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 202(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 2(g) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(g) of Income Withholding Transfer

and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-911.

**Legislative history of Law 6-166.** — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 16-924.

**Legislative history of Law 7-231.** — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see Historical and Statutory Notes following § 16-909.

**Legislative history of Law 11-87.** — Law 11-87, the “Child Support Enforcement and Licensing Compliance Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-225, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-158 and transmitted to both Houses of Congress for its review. D.C. Law 11-87 became effective on February 13, 1996.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 15-130.** — For Law 15-130, see notes following § 16-901.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.

**Legislative history of Law 16-138.** — For Law 16-138, see notes following § 16-916.01.

**Legislative history of Law 17-128.** — For Law 17-128, see notes following § 16-901.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

**Editor’s notes.** — Applicability: Section 4 of D.C. Law 16-138 provided: “This act shall apply as of April 1, 2007.”

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#### Action during pendency of suit.

Under statute providing that during pendency of suit for divorce court shall have power to require husband to pay alimony to wife and to enforce obedience to order by attachment and imprisonment for disobedience, only so long as divorce suit is pending does court have authority to require husband to pay alimony and to enforce obedience by attachment and imprisonment. D.C. Code 1940, § 16-410. *Cole v. Cole*, 161 F.2d 883, 1947 U.S. App. LEXIS 2852 (1947).

"Pendente lite" is defined as pending lawsuit, during actual progress of suit, or during litigation, and because pendente lite support is, by definition, interim and transient, right to such support can be irretrievably lost by delay. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Trial court erred in refusing to grant hearing and deferring until trial unwed mother's motion for pendente lite child support; in deferring mother's motion until trial, court thwarted purpose of pendente lite relief, and court's delay in addressing motion forced mother to give up custody of child five weeks prior to trial and prejudiced her substantial rights by contributing to one of the factors that entered into court's analysis of custodial arrangement which would be in child's best interest, i.e., child's residence with father at time of trial. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

#### Age of majority.

An allowance to wife of permanent alimony sufficient for her support and that of the minor children whom the court may assign to her care is alimony payable to the wife and is not contingent on minority of the children. D.C. Code 1940, § 16-411. *Kephart v. Kephart*, 193 F.2d 677, 1951 U.S. App. LEXIS 3511 (C.A.D.C. 1951).

The fact that children have reached majority may be ground for revision of alimony provision of divorce decree on proper application, but a judgment on such an application looks only to the future and does not act in retrospect. *Lockwood v. Lockwood*, 160 F.2d 923, 1947 U.S. App. LEXIS 2709 (1947).

Trial court had the authority to enter a civil contempt order against father due to his non-payment of child support, even though the parties' children had all reached the age of majority; the court had continuing jurisdiction to enforce a support order, and emancipation of the child did not dilute the court's authority to enforce arrearages incurred before emancipation. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

Parents have common-law duty to support their physically or mentally disabled children, even after children have reached age of majority. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

Reassessment of father's support obligation was mandated, with such reassessment not limited by terms of original support order, when father's and former wife's mentally disabled child reached age of majority. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

D.C. Code 1981, § 30-401, providing that age of majority shall be 18, except that act shall not affect any common law or statutory right to child support, did not supersede common-law right to child support, but merely defined age for common-law support purposes. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

Child support obligations continue until age 21. D.C. Code 1981, § 30-401. *Butler v. Butler*,

496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

Parent's obligation to pay child support did not cease when his child became 18, even though parent was ordered to pay child support in divorce decree rendered subsequent to enactment of D.C. Code 1981, § 30-401, providing that age of majority shall be 18, except that act shall not affect any common law or statutory right to child support. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

Child support on behalf of two daughters payable to mother until daughters' 21st birthdays was appropriate where mother indicated that she would be responsible for daughters' expenses even after they entered college. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

A trial court has no jurisdiction to order support payments after the child reaches majority at 21 and, thereafter, its *parens patriae* authority terminates so as to render unenforceable any court-created support obligations. D.C. Code 1981, § 16-916(c). *Norris v. Norris*, 473 A.2d 380, 1984 D.C. App. LEXIS 346 (1984).

Fact that a court supplements a continuing and binding contractual support obligation does not vest it with jurisdiction to order support payments after a child reaches his majority. D.C. Code 1981, § 16-916(c). *Norris v. Norris*, 473 A.2d 380, 1984 D.C. App. LEXIS 346 (1984).

Consent order could not legally require former husband to maintain his children after majority; therefore, there could be no arrearages due, under such consent order, for support of either child after that child's 21st birthday, notwithstanding that neither the original consent order nor any of the three amendments to it drew a distinction between the sum attributable to child support and that attributable to alimony. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

#### **Agreements regarding divorce settlements.**

Where agreement of parties incorporated in divorce decree provided for division of property and for monthly payments to wife "as maintenance for her support", although both provisions were included in same instrument, they were separable so that if parties intended monthly payments to be an alimony award, provision concerning monthly payments would be subject to modification. D.C. Code 1951, § 16-413. *Rogers v. Rogers*, 203 F.2d 61, 1953 U.S. App. LEXIS 3334 (C.A.D.C. 1953).

The trial court's order of child arrearages, which included a \$1,000 payment plus penalties for November 2000, was clearly erroneous, where former wife did not sign the agreement until November 9, 2000, and the agreement

provided that it "shall be effective upon execution by both parties." *Curtis v. Gordon*, 980 A.2d 1238, 2009 D.C. App. LEXIS 493 (2009).

If a settlement agreement with respect to child support is merged into the trial court's order of divorce, the binding force of the amount of child support is based on the authority of the court's order; in that situation, the parties' agreement has been adopted by the court as its own determination of the proper disposition, and the principles embodied in the child support guidelines apply to a modification request, rather than requirement of substantial and material, unforeseen change in circumstances. *Mazza v. Hollis*, 947 A.2d 1177, 2008 D.C. App. LEXIS 235 (2008).

Where husband's proffer to share equally with wife the proceeds from sale of marital house terminated when settlement agreement was found to be invalid, trial court did not err in ignoring the proffer in deciding the support issue. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

An agreement voluntarily made and intended as a final settlement of property rights and claims of parties to divorce action is binding on parties and will bar any further claims thereto on the part of either party. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

#### **Alimony.**

##### **— in general.**

Alimony is not intended as a penalty to be imposed upon husband nor as a compensation to solace wife for wrongful abandonment by her husband, and her financial condition is a relevant consideration which may limit or even defeat an award. D.C. Code § 16-912. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Wife waived claim for alimony by advising trial court that the only contested issues were the divorce and the distribution of the jointly owned realty. *Broadwater v. Broadwater*, 449 A.2d 286, 1982 D.C. App. LEXIS 400 (1982).

There are no fixed rules for determining if and in what amount alimony should be awarded; a general guideline is that alimony is intended to provide reasonable and necessary support to the recipient. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Because alimony is not intended as punishment, it may be awarded to a wife even though divorce was granted on husband's application and even if husband successfully proved adultery as grounds for divorce. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Alimony is not intended as a penalty to be imposed upon husband nor as compensation to



solace wife; its objective is to provide reasonable and necessary support to wife. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Policy underlying alimony statutes is to insure that where wife is entitled to support, she will receive it, and not become a public charge. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

There is no fixed set of rules or formula for determining permanent alimony and any award must be made only after careful study of particular facts of each case. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Award of alimony is not automatic, and is made only after a careful study of facts and circumstances existing in each particular case. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Alimony cannot be used as device to divide husband's property. *Sirianni v. Sirianni*, 338 A.2d 101, 1975 D.C. App. LEXIS 388 (1975).

Where trial court heard evidence on issue whether alimony should be granted, and amount thereof, it was not fatal for court to use "support" in lieu of "alimony." D.C. Code § 30-301 et seq.; D.C. Code SCR, Dom.Rel. Rules 60, 401(b)(4); Domestic Relations Law N.Y. § 30 et seq. *Mitchell v. Mitchell*, 310 A.2d 837, 1973 D.C. App. LEXIS 384 (1973).

It is not necessary in awarding alimony that trial judge ascertain with accounting accuracy exact net worth or income of husband or exact financial needs of wife. *Grasty v. Grasty*, 302 A.2d 218, 1973 D.C. App. LEXIS 253 (1973).

It is essential that in exercising discretion in determining appropriate amount of alimony and child support trial court first determine net income (or reasonable approximation thereof) from which a portion is to be set aside for alimony and support payments, as these items are recurring expenditures. *Grasty v. Grasty*, 302 A.2d 218, 1973 D.C. App. LEXIS 253 (1973).

Mortgage payments which court has ordered husband to make on marital abode in which wife still lives may constitute maintenance for wife and husband may be imprisoned for failure to make such payments. D.C. Code § 16-916. *Smith v. Smith*, 256 A.2d 833, 1969 D.C. App. LEXIS 307 (App. 1969).

Judgment to be applied by trial court in awarding alimony and making division of jointly held property is an overall judgment, not measured by any yardstick, rule of thumb or mathematical formula, and it is not necessary for trial judge to ascertain with accounting accuracy exact net worth of husband or exact needs of wife, but it is only necessary that award have reasonable basis in evidence, and if it has, reviewing court cannot substitute its judgment for that of trial court. *Leibel v. Leibel*,

190 A.2d 821, 1963 D.C. App. LEXIS 231 (App. 1963).

#### — Amount of alimony.

Trial court did not abuse its discretion in denying wife alimony, while awarding her all marital property, including a valuable home and a one-year-old automobile "in lieu of" alimony; judgment specifically referred to ages, health, current financial status and needs, and respective contributions of both parties to marital property, focused on wife's employability, and considered husband's financial situation. *Weiner v. Weiner*, 605 A.2d 18, 1992 D.C. App. LEXIS 74 (1992).

Award of definite sum of money of alimony to wife was not an abuse of discretion as award roughly replaced amount of income foregone by wife upon entering marriage. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

Award of alimony of \$900 per month to wife was not plainly wrong or without substantial evidence to support it in divorce action, where in making such determination consideration was given to the 14-year duration of the marriage, to the parties' standard of living based on the husband's 1971 gross income of \$67,000 earned as a practicing physician, to the future earning prospects of each, to wife's continuing medical problems, and to her inability to hold a job in "stressful situations." *Bradt v. Bradt*, 300 A.2d 445, 1973 D.C. App. LEXIS 223 (1973).

Where approximately \$100 per month of \$400 per month which wife had received from husband pursuant to New Jersey support decree was expended in payment of life insurance premiums on husband's life and trial court awarded the policy to the husband in divorce action, trial court did not abuse its discretion in its award to wife of alimony in amount of \$300 per month. *Seabrook v. Seabrook*, 264 A.2d 311, 1970 D.C. App. LEXIS 265 (App. 1970).

Award of \$35 per week for support and maintenance of wife who was in poor health, incapable of working, had no source of income or other property and who had been married to husband for 26 years, and of two minor children of marriage by husband with salary of approximately \$13,400 per year and who had admitted by pleadings and testimony that wife needed at least \$250 per month to support herself and two children did not constitute an exercise of sound discretion. D.C. Code §§ 16-913, 17-305(a). *Majette v. Majette*, 261 A.2d 824, 1970 D.C. App. LEXIS 212 (App. 1970).

Requiring husband to pay alimony to wife who was awarded one-half interest in their properties was not an abuse of discretion, in absence of data being supplied to support husband's argument that his only income was from properties and that requiring him to pay wife alimony from his reduced income would result

in wife having income far in excess of his. *Smith v. Smith*, 210 A.2d 831, 1965 D.C. App. LEXIS 202 (App. 1965).

#### — Court's discretion to set alimony.

Trial court has considerable discretion to decide amount of alimony and child support payments, and its decision will not be overturned on appeal unless that discretion has been abused. *Mizrachi v. Mizrachi*, 683 A.2d 137, 1996 D.C. App. LEXIS 187 (1996).

Discretion of District of Columbia courts to award alimony in divorce proceedings is not unlimited, for such a provision may be made only if there is substantial supporting evidence. *Carter v. Carter*, 473 A.2d 395, 1984 D.C. App. LEXIS 353 (1984).

Decisions respecting the grant or denial of alimony are committed to the sound discretion of the trial court and will be disturbed on appeal only when the record manifests abuse of that discretion. *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

The award of alimony is a matter committed to the sound discretion of the trial court and its determination in respect thereto will not be disturbed on appeal in absence of a clear abuse. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Alimony award is in discretion of trial court and will be overturned only on clear showing of abuse. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

Trial judges have broad discretion in determining amount of alimony and child support payments, and that determination will not be disturbed on appeal unless court clearly abused its discretion. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

Award of alimony is a matter committed to the sound discretion of the trial court; award may be disturbed only on showing of abuse of discretion. D.C. Code § 17-305(a). *Finch v. Finch*, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

Award of alimony and amount to be awarded therefor are matters confided to sound discretion of trial court in divorce case. *Hunt v. Hunt*, 208 A.2d 731, 1965 D.C. App. LEXIS 178 (App. 1965).

Alimony and division of jointly held property are matters entrusted to sound discretion of trial court, and, in exercising that judgment, consideration must be given to all facts and circumstances surrounding parties, and ultimate discretion must be result of considered judgment. *Leibel v. Leibel*, 190 A.2d 821, 1963 D.C. App. LEXIS 231 (App. 1963).

The law does not compel an award of support to the wife but leaves it to discretion of trial judge whose judgment will not be disturbed except upon clear showing of abuse. *Payton v.*

*Payton*, 187 A.2d 899, 1963 D.C. App. LEXIS 186 (App. 1963).

Both award of alimony and amount to be awarded are matters placed in trial court's discretion, and exercise of such discretion will not be disturbed on appeal except for clear abuse. D.C. Code 1951, § 16-411. *Shelton v. Shelton*, 153 A.2d 663, 1959 D.C. App. LEXIS 286 (Cr.App. 1959).

#### — Factors in setting alimony.

Certain primary factors, such as the duration of the marriage, the ages and health of the parties, their respective financial positions, both past and prospective, the wife's contribution to family support and property ownership, the needs of the wife and the husband's ability to contribute thereto, and the interest of society generally in preventing the wife from becoming a public charge, must be considered in determining whether to award maintenance to the wife and the amount of any such award. *Tibbs v. Tibbs*, App. D.C., 223 A.2d 279 (1966); *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

Denial of alimony to wife who left marital abode was not abuse of discretion where wife presented but minimal evidence relating to contribution to family property and she refused to testify with respect to her present income and ability to earn a living. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

The duration of the marriage, the number and age of children of the parties, the age and health of the parties, their respective economic conditions, both present and prospective, wife's contribution to the accumulation of husband's property, circumstances under which divorce was granted, effect, if any, upon the family, and the interest of society generally to prevent a person, where possible, from becoming a public charge, influence awards of alimony to wife whose husband has been granted a divorce. D.C. Code 1940, § 16-412. *Quarles v. Quarles*, 179 F.2d 57, 1949 U.S. App. LEXIS 2618 (C.A.D.C. 1949).

Trial court's failure to expressly address wife's request for alimony was error where wife was 51 years old, she suffered from degenerative eye condition and, possibly, heart condition and was unable to work due to injuries received in automobile accident, and her financial status after divorce was precarious. *Ealey v. Ealey*, 596 A.2d 43, 1991 D.C. App. LEXIS 209 (1991).

In determining whether to award alimony the trial court should consider several factors, including the duration of the marriage, the parties' age and health, their respective economic postures, and society's interest in seeing that former spouses do not become public



charges. *McCree v. McCree*, 464 A.2d 922, 1983 D.C. App. LEXIS 425 (1983).

In divorce action, trial court did not abuse its discretion in refusing to award husband alimony, since trial court considered duration of marriage, ground for divorce of living separate and apart for one year, employment history of parties, contribution of each to the acquisition and upkeep of marital property, and the facts that the parties' children were adults and that husband was in reasonably good health and able to sustain himself by continuing his self-employment. *Anderson v. Anderson*, 449 A.2d 334, 1982 D.C. App. LEXIS 421 (1982).

Although there are no firm guidelines in determining whether alimony should be awarded, spouse's income is a factor, and trial court should make findings as to the amount of spouses' incomes. *Anderson v. Anderson*, 449 A.2d 334, 1982 D.C. App. LEXIS 421 (1982).

Refusal to award wife alimony, given wife's demonstrated ability to earn income, her tenure at her present job, her good health and relative youth, duration of marriage, and absence of any children, was not an abuse of discretion. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

Trial court may consider all facts and circumstances in determining amount of alimony, and award must have reasonable basis in evidence. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

Adultery is just one of a number of factors to be taken into consideration by judge in determining whether to award alimony. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

In evaluating former wife's need for alimony it was improper to take into account expenditures made by wife on behalf of her son since such expenditures were properly considered in connection with the duty of child support. *Nelson v. Nelson*, 379 A.2d 713, 1977 D.C. App. LEXIS 263 (1977).

Factors which should serve as an objective when confronting question of permanent alimony include duration of marriage, ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Consideration of prospective economic condition of wife was proper in fixing amount of alimony. D.C. Code § 16-912. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

Factors to be considered in determining whether alimony should be granted and the amount thereof include duration of marriage,

ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. *Butler v. Butler*, 239 A.2d 616, 1968 D.C. App. LEXIS 139 (App. 1968).

Factors to be considered in determining whether alimony should be granted and amount thereof include duration of marriage, ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

In view of specific findings that her income was sufficient without contribution from the husband, refusal to award wife maintenance and support was not improper. *Hales v. Hales*, 207 A.2d 657, 1965 D.C. App. LEXIS 163 (App. 1965).

Denial of alimony to wife who had intentionally abandoned husband and marital home without justification and had made only minimal contribution of accumulation of property of husband entitled to divorce on ground of desertion was not abuse of discretion. D.C. Code 1961, §§ 16-904, 16-913. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

Broad discretion is vested in trial judge in awarding support and maintenance and in fixing amount thereof based on various factors, including reasonable needs of wife and ability of husband to contribute to her support, and determination of judge on this matter will not be disturbed except upon clear showing of abuse of discretion. D.C. Code 1961, § 16-916. *Mazique v. Mazique*, 206 A.2d 577, 1965 D.C. App. LEXIS 145 (App. 1965), affirmed by 356 F.2d 801, 123 U.S. App. D.C. 48, 1966 U.S. App. LEXIS 7512 (1966).

Whether an award of support to wife should be made and amount thereof are determined by various factors, including conduct and financial situation of parties. *Payton v. Payton*, 187 A.2d 899, 1963 D.C. App. LEXIS 186 (App. 1963).

#### — Right to alimony.

Wife's departure from marital residence was not without justification, so as to preclude award of spousal support, where husband had engaged in a mosaic of conduct and words which were tantamount to emotional abuse, cruelty, and intimidation. D.C. Code 1981,

§§ 16-904, 16-916(a). *Atkinson v. Atkinson*, 730 A.2d 667, 1999 D.C. App. LEXIS 128 (1999).

Wife, who separated from her physician husband after 26 years of marriage, was entitled to spousal support, even though she was in good health and a skilled seamstress, since she was required to take a loan to live separate and apart from husband, contact with fabrics exacerbated her allergies, and husband received an ample income from his medical practice and pension fund. D.C. Code 1981, § 16-916(a). *Atkinson v. Atkinson*, 730 A.2d 667, 1999 D.C. App. LEXIS 128 (1999).

Receipt of public assistance is not a requirement for obtaining spousal support under statute as a "needy spouse." D.C. Code 1981, § 16-916(a). *Atkinson v. Atkinson*, 730 A.2d 667, 1999 D.C. App. LEXIS 128 (1999).

Rights of wife to alimony derived from her contractual agreement with husband and more importantly from divorce decree itself and was solely consistent with purposes of alimony as outlined by case law. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

#### **Amount of child support award.**

Magistrate judge did not abuse her discretion in awarding biological mother pendente lite child support in the amount of \$4,000/month pending resolution of mother's action seeking permanent child support and child custody; the judge considered both the exiting guidelines and proposed revisions, biological father's annual income of \$2.1 million/year and mother's lack of any income was well beyond cap in either of the guidelines, father was paying \$4,000/month in child support for three other children from a previous marriage, father would likely have paid close to \$3,100/month if the case had been filed in Virginia where the guidelines did not cap out at higher income levels, and case law provided that when a noncustodial parent's income exceeded the highest amount to which the guidelines applied a court could award a level of support commensurate with the income and lifestyle of the noncustodial parent. *Upson v. Wallace*, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

The parties' separation, custody, support and property settlement agreement, which provided that former husband owed former wife \$100 per month for each and every month in which former husband failed to make a child support payment, was not ambiguous or unconscionable; agreement was not ambiguous and imposed a \$100 penalty for each missed monthly obligation, and former husband failed to establish that he lacked a meaningful choice.

*Curtis v. Gordon*, 980 A.2d 1238, 2009 D.C. App. LEXIS 493 (2009).

Requiring former wife to pay \$150 per month in child support for 14-year-old child who resided with former husband was not abuse of discretion in divorce action in which trial court found that although former wife was unemployed, she had investment accounts, property in Italy and bank account with balance of over \$40,000, in which there was evidence that former wife was able to give adult daughter between \$400 and \$500 per month to help with expenses, and in which trial court found that former wife had made money in past and had marketable skills. D.C. Code 1981, §§ 16-916.1, 16-916.1(e)(2). *Negretti v. Negretti*, 621 A.2d 388, 1993 D.C. App. LEXIS 58 (1993).

Awarding wife, the custodial parent, \$2,372 per month in child support, the suggested figure under the child support guideline given the parties' respective financial situations and the ages of the children, was not an abuse of discretion; trial court's findings reflected financial obligations resulting from children's medical and dental needs, and reflected that husband had agreed to share those expenses as well as a tuition bill owed at time of trial. *Weiner v. Weiner*, 605 A.2d 18, 1992 D.C. App. LEXIS 74 (1992).

Trial court properly considered husband's income for year for which most recent and complete records were available, rather than current year, in calculating his child support obligation, where husband made it difficult for wife and trial court to ascertain his current income and trial court allowed reduction in support to take into account slump in husband's income for current year. *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Trial judge's error in concluding that emergency child support guidelines did not apply in paternity action was harmless, where amount of support actually awarded was consistent with guidelines. D.C. Code 1981, §§ 16-916, 16-916.1, 16-916.2. *J.A.W. v. D.M.E.*, 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

#### **Arrearages.**

On wife's motion to adjudicate arrears of alimony, trial court acted properly in enforcing full payment of accrued alimony notwithstanding children who were minors when award was made had reached majority at time default in payment commenced. *Lockwood v. Lockwood*, 160 F.2d 923, 1947 U.S. App. LEXIS 2709 (1947).

It was not error for trial court to refuse to hold former husband in contempt of court for failing to pay over \$12,000 in alimony, although former husband stated that he did not pay alimony for a number of years, and it was clear from record he had ability to pay, where former



husband also stated he was unable to locate former wife during period he did not pay alimony, former wife did not refute that statement, and former husband was again paying alimony and had paid large sum of arrearage at time of contempt hearing. *Li v. Lee*, 817 A.2d 841, 2003 D.C. App. LEXIS 90 (2003).

Trial court abused its discretion in partially vacating consent order, thereby allowing father reduction of his current child support amount, but holding child's legal custodian and trustee of her estate to their agreement to delay collection of arrearages; custodian and trustee agreed to defer collection of substantial sum of money due for support of child, and they might not have agreed to lengthy deferral absent acceptable agreement on the current child support amount. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

It was within trial court's discretion to order father to pay child support retroactive to date of filing of complaint. *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

Finding that former wife was not estopped from claiming child support arrearage was sufficiently supported by evidence that former husband made child support payments directly to children at college pursuant to agreement with children, rather than agreement with former wife. *Nolan v. Nolan*, 568 A.2d 479, 1990 D.C. App. LEXIS 1 (1990).

Support arrearages under a divorce decree ripen into money judgments. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Equitable defense of laches did not bar former wife from recovering from husband's estate past-due child support payments due over the period 1958-1975, regardless of whether former wife's delay in enforcing her claims was undue and unexplained or whether husband lacked "clean hands," where executrix of husband's estate failed to establish that injustice would result from enforcement of husband's support obligations. D.C. Code 1973, § 15-101(b). *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

Husband's death did not result in loss of evidence and a witness who would support position set forth by former wife in petition for past-due child support so as to establish injustice of type required for defense of laches, where records before trial court established extent of husband's compliance with support order and testimony of daughter concerning monetary gifts she received from her father during her minority was consistent with former wife's testimony on subject. D.C. Code 1973, § 15-101(b). *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

Divorced wife, who filed Uniform Reciprocal Enforcement of Support Act petition, was entitled to award for amount which divorced hus-

band should have paid her from date petition was filed to time of her remarriage but could not be awarded any sum for any arrearage in his alimony and child support payments at time petition was filed. D.C. Code § 30-301 et seq. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

Recomputation of arrearages to exclude any amount representing child support payments accruing after child turned 21 would not amount to a retroactive modification of support payments since order under which the arrearages accrued could not legally require husband to maintain the child after majority. D.C. Code § 16-916. *Nelson v. Nelson*, 379 A.2d 713, 1977 D.C. App. LEXIS 263 (1977).

Where order requires husband to make payments to wife for maintenance of minor children, and thereafter a child is emancipated, District of Columbia courts have no authority to modify or remit payments that become due after child is emancipated and before motion to modify support order is filed. *Rhodes v. Gilpin*, 264 A.2d 497, 1970 D.C. App. LEXIS 274 (App. 1970).

Where former husband halved and then ceased monthly support payments to wife but did not attempt to apply for modification of support order until 20 months later, court had no authority to modify or remit payments that became due after emancipation of child and before application for modification was filed, and order finding a full arrearage was not error. *Rhodes v. Gilpin*, 264 A.2d 497, 1970 D.C. App. LEXIS 274 (App. 1970).

In action by divorced wife against husband to recover accumulated sums due for support of minor child under separation agreement that had been incorporated in divorce decree obtained by wife, wherein husband contended that separation agreement was void as against public policy, trial court was not entitled to base decision for wife solely on ground that rights of the child were involved and that child had not had an opportunity to be heard, and to ignore all other factors. *Plant v. Plant*, 57 A.2d 204, 1948 D.C. App. LEXIS 131 (Cr.App. 1948).

#### Attorney fees.

After death of plaintiff wife, court properly refused in divorce action to enter order against husband for payment of wife's counsel fees. Code, § 975 (D.C. Code 1929, T. 14, § 70). *Bailey v. Scott*, 18 F.2d 184, 1927 U.S. App. LEXIS 1913 (1927).

Attorney fee request of \$3,420, made in action to enforce New York divorce judgment, was excessive, warranting 50% reduction of proposed award; counsel failed to show that rates charged were market rates for such services in relevant community, and claimed excessive hours for legal research and filing complaint, in light of simplicity of case. *Depuy v. Depuy*, 686

F. Supp. 568, 1988 U.S. Dist. LEXIS 6369 (1988).

Under Virginia law, wife was entitled to recover attorney fees incurred in enforcing New York divorce judgment requiring former husband to make support payments. *Depuy v. Depuy*, 686 F. Supp. 568, 1988 U.S. Dist. LEXIS 6369 (1988).

In divorce action, where an attorney was appointed for defaulting defendant and final decree granting divorce ordered defendant to pay a fee to attorney but statute providing compensation for attorney so appointed made no provision for enforcement of payment of compensation, attorney could not enforce payment of his fee by way of contempt proceeding. D.C. Code 1940, § 16-418. *Robinson v. Robinson*, 80 F.Supp. 397, 1942 U.S. Dist. LEXIS 3460 (D.D.C.1942).

Award of counsel fees in divorce proceeding involves two separate questions: whether to award any fees and to whom to award them, and what amount of fee should be awarded. *Carter v. Carter*, 615 A.2d 197, 1992 D.C. App. LEXIS 254 (1992).

Evidence in divorce proceeding supported award to wife of \$7,500 in attorney's fees; evidence indicated that wife incurred approximately \$17,500 in legal fees, and husband did not contend before trial court that amount of fees was unreasonable. D.C. Code 1981, § 16-911(a)(1). *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Trial court, hearing wife's motion to increase husband's child support obligations above amounts specified in couple's separation agreement, was required to interpret separation agreement's attorney fee waiver provision to determine whether parties intended to waive their rights to recover attorney's fees only if divorce was "amicable" and did not involve expensive litigation. *Portlock v. Portlock*, 518 A.2d 116, 1986 D.C. App. LEXIS 485 (1986).

Court should consider whether litigation has been oppressive or burdensome to party seeking award of attorney fees in divorce action and should consider motivation and behavior of litigating parties only in coming to a determination of whether any award should be made; once the threshold is crossed, those factors play no role in deciding the amount of the fee to be awarded. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Factors to be considered in determining award of attorney fees to appointed counsel in domestic relations case include: necessity for services of attorney, quality and nature of work performed, financial ability of party ordered to pay, and fault of the nonaggrieved party. D.C. Code 1981, §§ 16-911(a)(1), 16-914(a), 16-916, 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Proper factors for trial court to weigh in determining amount of attorney fees to award in divorce proceeding include quality of services rendered, skills of counsel, result of litigation, difficulty of case, ability to pay attorney fees, and respective earning capacities of parties. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Trial court had jurisdiction to hear motion for attorney's fees where motion did not seek revocation or alteration of judgment on appeal, quashing writ of attachment. D.C. Code 1981, § 16-916(a). *Padgett v. Padgett*, 478 A.2d 1098, 1984 D.C. App. LEXIS 438 (1984).

Court's order granting attorney's fees to wife in action to enforce consent order, entered under the Uniform Reciprocal Enforcement of Support Act, for alimony and child support was not abuse of discretion even though writ of attachment had been quashed, in light of findings that legal services were warranted, wife's action was necessitated by husband's failure to pay support in accordance with court order, and husband was able to pay the attorney's fee and costs, as the amount of the award was within permissible limits. D.C. Code 1981, § 30-301 et seq. *Padgett v. Padgett*, 478 A.2d 1098, 1984 D.C. App. LEXIS 438 (1984).

Trial court erred in entering an order awarding \$52,390.83 in attorney fees to wife in divorce action without affording husband benefit of a hearing and without making findings and conclusions with respect to the award, where husband filed a timely motion for an extension of time within which to file in opposition to wife's motion for an award of attorney fees and indicated both orally and in writing his desire for a hearing upon the question of such fees. *Padgett v. Padgett*, 478 A.2d 1098, 1984 D.C. App. LEXIS 438 (1984).

Requirement in trial court's order in divorce judgment that former husband make payments of attorney fees to former wife through clerk of the court was not waivable. *Washburn v. Washburn*, 475 A.2d 410, 1984 D.C. App. LEXIS 393 (1984).

In divorce action, trial court has broad discretion in the award of counsel fees. *Anderson v. Anderson*, 449 A.2d 334, 1982 D.C. App. LEXIS 421 (1982).

In divorce action, trial court did not abuse its discretion in denying husband attorney fees, in view of court's finding that husband was able to sustain himself. *Anderson v. Anderson*, 449 A.2d 334, 1982 D.C. App. LEXIS 421 (1982).

After a decree of divorce in any case granting alimony and support, the case shall still be considered open for any future orders relating to those matters, and an order for the payment of counsel fees is an "order relating to those matters." D.C. Code 1981, § 16-914. *Smith v. Smith*, 445 A.2d 666, 1982 D.C. App. LEXIS 361 (1982), writ of certiorari denied by 459 U.S.



1115, 103 S. Ct. 749, 74 L. Ed. 2d 968, 1983 U.S. LEXIS 2990, 51 U.S.L.W. 3509 (1983).

Court can award attorney fees which result from time spent attempting to collect alimony after alimony has been granted. D.C. Code 1981, § 16-914. *Smith v. Smith*, 445 A.2d 666, 1982 D.C. App. LEXIS 361 (1982), writ of certiorari denied by 459 U.S. 1115, 103 S. Ct. 749, 74 L. Ed. 2d 968, 1983 U.S. LEXIS 2990, 51 U.S.L.W. 3509 (1983).

Matter of husband's liability for wife's attorney fees in connection with husband's motion that decree of separate maintenance and support be set aside and that court enter order determining the respective rights of the parties anew was within the sound discretion of the trial court. *Mohler v. Mohler*, 302 A.2d 737, 1973 D.C. App. LEXIS 262 (1973).

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. D.C. Code § 16-911(1). *Mohler v. Mohler*, 302 A.2d 737, 1973 D.C. App. LEXIS 262 (1973).

In determining amount of award of counsel fees to wife in divorce suit, trial court is not bound by any mathematical computation of time consumed multiplied by some hourly rate. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Where, upon wife's appeal, divorce decree was reversed in part and affirmed in part, wife was entitled to \$300 as counsel fees for legal services rendered on wife's behalf in District of Columbia Court of Appeals. D.C. Code Court of Appeals Rules, rule 39(b, c, g). *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

Where divorced wife was forced to litigate to compel husband to pay child support due, award of attorney fee was proper under statute giving court such power when father fails or refuses to maintain his children, notwithstanding that husband may have based refusal on good-faith misinterpretation of separation agreement. D.C. Code § 16-916. *McGehee v. Maxfield*, 256 A.2d 576, 1969 D.C. App. LEXIS 302 (App. 1969).

Award of counsel fees to wife in divorce proceeding was required to be reconsidered where it represented amount equalling nearly one-third of husband's annual salary. *Stephenson v. Stephenson*, 221 A.2d 917, 1966 D.C. App. LEXIS 206 (App. 1966).

Statute providing for imprisonment for non-payment of counsel fees granted during pen-

dency of divorce suit applied, and facts that divorce sought by husband was denied and that judgment provided for separate maintenance and support payments and for payment of wife's counsel fees by husband did not prevent enforcement of award of counsel fees. D.C. Code 1961, §§ 15-320, 16-911. *Edmonds v. Edmonds*, 212 A.2d 534, 1965 D.C. App. LEXIS 224 (App. 1965).

Divorce court lost its power to award counsel fees when divorce action abated because of wife's death. *Meyers & Batzell v. Moezie*, 208 A.2d 627, 1965 D.C. App. LEXIS 169 (App. 1965).

Trial court did not abuse discretion in denying wife award of suit money and counsel fees in her action for legal separation from bed and board, where wife was consorting with another man. *Schwier v. Schwier*, 207 A.2d 115, 1965 D.C. App. LEXIS 158 (App. 1965).

Where wife's counsel received retainer of \$250 and, after terminating martial relationship, wife withdrew parties' principal savings from joint bank account thereby restricting husband's ability to pay counsel while substantially improving her own financial position, denial of counsel fees to wife was not an abuse of discretion. *Kemp v. Kemp*, 206 A.2d 731, 1965 D.C. App. LEXIS 150 (App. 1965).

Under evidence that husband was 65 years of age, was in debt and without funds or assets and without employment and with no prospect of any immediate employment, denial of maintenance or attorney's fee to wife suing for limited divorce was within discretion of trial court. *Kemp v. Kemp*, 206 A.2d 731, 1965 D.C. App. LEXIS 150 (App. 1965).

Trial court did not abuse its discretion in awarding unsuccessful wife only \$1,500 as counsel fees, though divorce trial lasted eight days. D.C. Code 1961, § 16-410. *Ritz v. Ritz*, 197 A.2d 155, 1964 D.C. App. LEXIS 190 (App. 1964).

Finding that wife who resided in Iran was seriously ill and unable to travel to United States where husband's divorce action was pending against her, based on pure hearsay, was erroneously included in order requiring husband to pay transportation and other costs incurred by wife's counsel in traveling to Iran to take her deposition. *Moezie v. Moezie*, 192 A.2d 808, 1963 D.C. App. LEXIS 267 (App. 1963).

The court may decree that a parent pay reasonable sums periodically for the support and maintenance of the child, including counsel fees, to enable plaintiff to conduct cases. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

Application of provision awarding attorneys' fees under subsection (c) is not restricted to proceedings involved in establishing initial support obligation. *Cole v. Kinley*, 118 WLR 1001 (Super. Ct. 1990).

#### Child support awards.

Husband incarcerated for shooting wife could

not be ordered in divorce action to pay monthly child support of \$50 as debt or judgment deferred until his release from prison, as rule preventing parent from evading child support responsibility by voluntarily reducing income did not apply; although husband shot wife voluntarily, there was no suggestion that he did so with purpose to be arrested, spend next seven years and more in prison, and thereby voluntarily reduce his income. D.C. Code 1981, §§ 16-916.1, 16-916.1(e)(2), 30-504(b). *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994).

Order for child support does not involve only the parent required to make such payments and the parent entitled to receive them; child support is a right which belongs to the child and any dereliction or misconduct on part of the custodial parent has no significance in determining the right of the child to support from the noncustodial parent. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

Child's right to support does not depend on divorce decree. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

There is no precise formula for arriving at equitable figure for amount of husband's contribution to child's expenses after divorce and correct approach is for court to balance the many factors surrounding pecuniary situation of family and reasonable needs of child and, if judge has expressly weighed the appropriate factors, he may exercise broad discretion as to level of support ordered. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

Trial court did not abuse its discretion in ordering husband to pay \$650 per month child support in divorce case, despite husband's claims of increasing financial difficulties and heavy burden of debts, where at time of trial his salary had increased to \$45,000 annually, and a large portion of his alleged debt involved financial obligations to his family, but no payments had been made for many years, so that it was not clear that the family loans constituted actual obligations at all. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

Child support award requiring husband to pay approximately 33 percent of his income toward child's support and obligating wife to contribute 28 percent of her net income was not improper, despite husband's contention that the award resulted in substantial disparity in percentage of monthly income allocated by parties for support of child. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

In an original action for support, trial court's exercise of discretion in determining rights of parties and minor children to support will not

be set aside for abuse unless order of support is not reasonably related to court's written findings with respect to needs of persons to receive such support and ability of payor to pay. D.C. Code § 16-916(a). *Wright v. Wright*, 386 A.2d 1191, 1978 D.C. App. LEXIS 385 (1978).

Original support order in divorce case was conclusive on the parties where there was no showing by husband of a material change since time of decree in his ability to pay or in the needs of the children. *McGean v. McGean*, 339 A.2d 384, 1975 D.C. App. LEXIS 391 (1975).

Award of child support was a matter committed to trial court's discretion and included consideration of father's welfare and enforcement of his obligation commensurate with his financial ability to pay. *Roberson v. Roberson*, 297 A.2d 769, 1972 D.C. App. LEXIS 297 (1972).

Where income of trust created by husband's deceased aunt would be available for maintenance, education and support of husband's children, regardless of his ability to provide for them, trust provided income of \$12,000 annually and wife made no showing that support for each of two minor children in amount of \$10 per month was unfair or unreasonable, trial court did not err in requiring use of the trust funds for support of two children even though husband was financially able to support children. *Brown v. Brown*, 260 A.2d 675, 1970 D.C. App. LEXIS 195 (App. 1970).

Trial court was without authority to appoint trustee to take over accumulated support payments made by father through clerk's office representing contributions for specific periods for current support which could not be used for that purpose as mother had taken children beyond jurisdiction of court and presumably had provided for them, and such funds could not be kept for any anticipated future needs of children and were to be returned to father. *Adams v. Adams*, 196 A.2d 915, 1964 D.C. App. LEXIS 181 (App. 1964).

The court lacks discretion under subsection (c) to decline to order any child support where there is a showing of the respondent's duty and present ability to pay, and of a previous failure to pay. *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).

To the extent possible, a child's parents are primarily responsible for his or her support, not the District of Columbia. *E.K. v. C.S.*, 119 WLR 2273 (Super. Ct. 1991).

### Children-out-of-wedlock.

Retroactive child support was warranted, where aunt sought reimbursement for expenses in caring for child from date on which she took over child's care after mother's death and father conceded paternity. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

A finding of paternity necessarily includes a finding that the child is entitled to support from



the now-identified father, as well as the mother. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

If a father can show why he should be excused from the duty to support his child, he must do so; otherwise the court should generally order that child support payments be made retroactive to the child's birth. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Former husband was not equitably estopped to deny paternity of child born during marriage, even though his name was on birth certificate of child, where former wife falsely represented to husband that child was born from artificial insemination, rather than having been conceived through adulterous affair. D.C. Code 1981, §§ 16-909(a)(1), (b), 16-916(c). *Dews v. Dews*, 632 A.2d 1160, 1993 D.C. App. LEXIS 269 (1993).

Curative legislation setting forth child support guidelines could be applied retroactively to validate order requiring putative father of child born out-of-wedlock to pay child support, which had been issued pursuant to superior court guidelines that were subsequently invalidated; legislation did not differentiate between support orders that had not been appealed and support orders that were pending on appeal at time of decision invalidating court guidelines. D.C. Code 1981, §§ 16-916, 16-916.1(r). A.S. v. District of Columbia, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

Child's right to parental support begins at birth, and possibility that child's paternity may have to be ascertained in court proceeding cannot excuse father, once his identity is established, from fulfilling his parental duty of support. D.C. Code 1981, §§ 16-916, 16-916(a, c). J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Emergency child support guidelines were applicable to paternity action in which judge signed final order the day after guidelines became law, even though guidelines were in effect for less than three months. D.C. Code 1981, §§ 16-916, 16-916.1, 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Trial court is statutorily authorized to award attorney fees in paternity suits which include claims for child support. D.C. Code 1981, § 16-916(c). J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Obligation to support minor children is shared by both parents, and applies to children born out of wedlock as well as children born in wedlock. D.C. Code 1981, §§ 16-916(a), 30-320. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Both children born in and out of wedlock may receive pendente lite support, in court's discretion. D.C. Code 1981, § 16-916(a). J.A.W. v.

D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Court had authority to award child support retroactively to date support petition was served upon man ultimately adjudicated to be father, where child was born out of wedlock. D.C. Code 1981, §§ 16-916(c), 30-315. *Cyrus v. Mondesir*, 515 A.2d 736, 1986 D.C. App. LEXIS 445 (1986).

Duty of a parent to support a child whether born in wedlock or out of wedlock arises automatically upon establishment of parentage by sufficient proof. D.C. Code 1981, § 16-916. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

### **Clean hands doctrine.**

Any wrongdoing by a custodial parent has no effect on the child's right to increase in amount of support provided by the noncustodial parent; unclean hands of a custodial parent may have some relevance to that parent's personal claim against the noncustodial parent but not to a claim submitted on behalf of the child. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

Absence of clean hands on part of a custodial parent is not a bar to a request by that parent, on behalf of his/her minor child, for a court-ordered increase in child support; hence, fact that after moving for increase in child support obligations the custodial mother bought a new \$14,000 automobile was no bar to the motion on ground that mother lacked clean hands. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

The clean hands doctrine may apply to bar request by the supporting parent for a reduction in the amount of child support payments; hence, fact that after filing motion for increase in court ordered child support both parents purchased new automobiles might be relevant to the issue of changed circumstances. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

### **Construction with other law.**

While trial court may have erred in entering Uniform Reciprocal Enforcement of Support Act order greater in scope than support obligation under parties' separation agreement, and to that extent issued voidable order, court did not act beyond its power so as to render judgment void, where father repeatedly and voluntarily appeared before courts of District of Columbia and received ample opportunity to present his case, and court's jurisdiction over subject matter was undisputed. D.C. Code 1981, §§ 16-916, 30-306. *Kammerman v. Kammerman*, 543 A.2d 794, 1988 D.C. App. LEXIS 74 (1988).

Father brought into proceeding under the Uniform Reciprocal Enforcement of Support

Act could not be heard to complain about application of law of jurisdiction in which he was domiciled, i.e., would not be heard to claim that application of District of Columbia law violated his right to equal protection of law and his right to due process of law. D.C. Code 1981, §§ 16-916, 30-302(3), 30-304; U.S. Const. Amends. 5, 14. *Rittenhouse v. Rittenhouse*, 461 A.2d 465, 1983 D.C. App. LEXIS 371 (1983).

Although father was not required to support child beyond the age of 18 under the law of Maryland where the child resided, District of Columbia court, in a proceeding brought under the Uniform Reciprocal Enforcement of Support Act, could order the father to pay support until child reached age 21. D.C. Code 1981, §§ 16-916, 30-301 et seq., 30-304. *Rittenhouse v. Rittenhouse*, 461 A.2d 465, 1983 D.C. App. LEXIS 371 (1983).

In divorce proceeding, wife's invocation of the Fifth Amendment as to her relations with another man did not bar her plea for alimony. U.S. Const. Amend. 5. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

#### Debts.

Individual creditors had causes of action for debts incurred by wife after separation and before filing of complaint for separate maintenance, and divorce decree was not objectionable for refusal to order husband to assume responsibility for those debts. D.C. Code § 16-916(a). *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

#### Denial of visitation.

An order denying a parent the right to visit his child is appealable, notwithstanding that proceedings to terminate parental rights have not been instituted. In re *Ko.W.*, 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

A non-custodial parent has the right of visitation with the children and ought not to be denied that right unless by his conduct he has forfeited his right, or unless the exercise of the right would injuriously affect the welfare of the children. In re *Ko.W.*, 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Parent's right of visitation is not absolute. In re *D.M.*, 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Where separation agreement was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with children would not be a matter of breach of contract but would be a matter of breach of the decree, and husband's remedy was not to unilaterally disregard the provisions of the decree by withholding support payments and by refusing to execute certain documents required for distribution of property. *Mohler v. Mohler*, 302 A.2d 737, 1973 D.C. App. LEXIS 262 (1973).

Where husband and wife entered into separation agreement which was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with his children would not constitute basis for revision by court of support payments provided in the agreement, absent contention that husband was no longer able to make the payments or that there had been a substantial change in his financial situation. *Mohler v. Mohler*, 302 A.2d 737, 1973 D.C. App. LEXIS 262 (1973).

Court hearing divorced husband's motions to suspend further support for minor child, to adjudicate wife in contempt for failure to allow him reasonable visitation rights and to alter custody provisions in consent order, was not bound to accept husband's uncontradicted testimony but could take into consideration his demeanor and motive in passing on his veracity, and, accordingly, trial court's findings rejecting his contentions, upon which it denied motions, could not be held contrary to the evidence. *Sens v. Sens*, 186 A.2d 226, 1962 D.C. App. LEXIS 333 (Cr.App. 1962).

#### Desertion.

Proof that wife has abandoned marital abode and concomitant responsibilities of marital relation without just cause or reason may be considered in determining whether to award her alimony. *Mazique v. Mazique*, 356 F.2d 801, 1966 U.S. App. LEXIS 7512 (C.A.D.C. 1966), writ of certiorari denied by 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, 1966 U.S. LEXIS 1507 (1966).

Question of whether wife had deserted husband or whether she was forced to leave was question of one for trier of fact in determining whether or not wife was entitled to alimony. *Norris v. Norris*, 419 A.2d 982, 1980 D.C. App. LEXIS 358 (1980).

Once divorce is granted, rationale justifying denial of support payments during separation caused by desertion fails and court then becomes bound to consider equities of case in awarding or disallowing alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

Desertion, while bar to separate maintenance, is not absolute bar to alimony but is one of number of factors to be considered by judge in determining whether to award alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

Even if wife had deserted marital abode, that would not bar payment of all alimony. D.C. Code § 16-913. *Kessler v. Kessler*, 397 A.2d 932, 1979 D.C. App. LEXIS 281 (1979).

#### Domicile.

There is no requirement under statute providing that action for support may be brought



in the district "whenever any parent shall fail or refuse to maintain his or her children by a marriage since dissolved. . ." that party seeking such support be domiciled in the district. D.C. Code 1981, § 16-916(a). *Brown v. Dyer*, 489 A.2d 1081, 1985 D.C. App. LEXIS 345 (1985).

### **Duty to support children.**

Statute providing that, when father or mother fails to maintain child, court may decree that father or mother pay reasonable sums periodically for support of child and that parent obtain medical insurance for child cannot be read to establish a duty of support upon individual who is not the mother or father, including adoptive mother or father, of child; statute uses word "parent" interchangeably with words "mother" and "father." *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

To extent that trial court's determination to set aside the parties' agreement regarding support rested upon assumption that personal income of child's unrelated legal custodian required offset to guideline amount in same manner as a father or mother, court exercised its discretion based upon improper element, and, thus, court abused its discretion; statute providing that, when father or mother fails to maintain child, court may decree that father or mother pay reasonable sums for support of child could not be read to establish duty of support upon individual who was not mother or father. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

Parent has legal duty to provide support to his or her children if able to do so, and court may enforce that duty by appropriate order. D.C. Code 1981, §§ 16-911(a)(1-4), 16-916(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Parents have an unqualified obligation to contribute to support of their children. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

Child support is common-law right which arises by virtue of existence of family relationship. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

A divorced father has a legal obligation to support his minor children, and neither parent, by agreement of their own, can oust the jurisdiction of the court to award a larger amount than agreed upon, and in making its decision the court should be governed by the present needs of the children and the father's ability to provide for them. *Blumenthal v. Blumenthal*, 155 A.2d 525, 1959 D.C. App. LEXIS 377 (Cr.App. 1959).

### **Enforcement.**

#### **— Ability to pay, enforcement.**

One who has no money or tangible property may be punished for contempt for failure to pay

alimony award, if he makes no honest effort, considering his physical and mental capabilities, to work and earn money to pay alimony. *Kelly v. Kelly*, 137 F.2d 254, 1943 U.S. App. LEXIS 2790 (1943).

Trial court order holding father in civil contempt of court and ordering him to prison until he purged his contempt by paying \$85,918 was not an abuse of discretion; mother established that father was subject to a child support order and was \$85,918 in arrears, father never offered a financial explanation for the arrears, and the court found that father had the ability to pay the arrears. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

Although the court may hold a debtor in civil contempt to force compliance with a child support order, the trial court must predicate its application of such sanction on a finding that the defendant is able to pay the debt owed, considering all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Finding of financial ability to comply with support and maintenance order is an essential prerequisite if person is to be imprisoned to coerce compliance. *Smith v. Smith*, 256 A.2d 833, 1969 D.C. App. LEXIS 307 (App. 1969).

#### **— Garnishment of wages, enforcement.**

Father's wages could be assigned to pay child support and attorney fees, which mother incurred in child custody and support proceeding, even though he was not in arrears on attorney fees at time of court order, where he was two months behind in court-ordered support payments. D.C. Code 1981, §§ 16-911(a)(4), 16-916, 16-916(c, d). *Martin v. Tate*, 492 A.2d 270, 1985 D.C. App. LEXIS 389 (1985).

When party is in arrears on one type of court-ordered payment, court may order wage assignment not only as to that type of payment, but also as to any other type which court may require under statute governing child support and maintenance. D.C. Code 1981, §§ 16-911(a)(4), 16-916. *Martin v. Tate*, 492 A.2d 270, 1985 D.C. App. LEXIS 389 (1985).

#### **— In general.**

District of Columbia statute providing that, in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. D.C. Code 1940, §§ 16-410, 16-411. *Montgomery v. Montgomery*, 153 F.2d 634, 1946 U.S. App. LEXIS 1955 (1946).

A Maryland judgment for arrears of alimony due under decree obtained in the District Court

for the District of Columbia did not bar sequestration proceedings in the District Court to collect installments of alimony accruing after the Maryland action was brought. *Junghans v. Junghans*, 112 F.2d 212, 1940 U.S. App. LEXIS 4266 (1940).

Failure to pay alimony arising from personal injuries not contempt. *Caffrey v. Caffrey*, 4 F.2d 952, 1925 U.S. App. LEXIS 3135 (1925).

Under Code, § 975 (D.C. Code 1929, T. 14, § 70), authorizing the rendering and enforcement of personal decrees for temporary alimony, the court can, in a case where the matrimonial domicile and the domicile of the wife are within the District, and the defendant husband has absconded therefrom to avoid service, sequester the property of defendant within the District for the payment of the temporary alimony. *Thompson v. Tanner*, 287 F. 980, 1923 U.S. App. LEXIS 2412 (1923).

Under Code, § 975 (D.C. Code 1929, T. 14, § 70), authorizing the court to enjoin disposition of husband's property to avoid the collection of alimony, and, in case of the husband's failure or refusal to pay alimony, to sequester his property, the court is not authorized to grant the writ of sequestration until after the husband has defaulted in the payment of some installment of the alimony. *Stewart v. Stewart*, 286 F. 987, 1923 U.S. App. LEXIS 2798 (1923).

A count in a suit for unpaid alimony, setting out an unrecalled decree of a court of another jurisdiction for the payment of alimony, states an action in debt, being founded on a judgment record. *Phillips v. Kepler*, 47 App.D.C. 384, 1918 U.S. App. LEXIS 2428 (1918).

Husband's obligation to pay installments of alimony as they accrue is enforceable by execution, sequestration, or contempt proceedings. D.C. Code 1940, § 16-410. *Cole v. Cole*, 67 F.Supp. 134, 1946 U.S. Dist. LEXIS 2304 (D.D.C.1946).

After entry of final judgment dismissing wife's action for divorce, husband would be adjudged guilty of contempt of court for failure to pay installments of alimony pendente lite accruing before entry of such judgment. D.C. Code 1940, § 16-410. *Cole v. Cole*, 67 F.Supp. 134, 1946 U.S. Dist. LEXIS 2304 (D.D.C.1946).

It was not error for trial court to refuse to hold former husband in contempt of court for failing to pay over \$12,000 in alimony, although former husband stated that he did not pay alimony for a number of years, and it was clear from record he had ability to pay, where former husband also stated he was unable to locate former wife during period he did not pay alimony, former wife did not refute that statement, and former husband was again paying alimony and had paid large sum of arrearage at time of contempt hearing. *Li v. Lee*, 817 A.2d 841, 2003 D.C. App. LEXIS 90 (2003).

Conditioning deferral of distribution of wife's equitable interest in marital home upon husband's timely child support payments was not abuse of discretion; husband had history of being delinquent in making child support payments, and order was intended to serve as incentive to encourage him to make timely payments. *Sanders v. Sanders*, 602 A.2d 663, 1992 D.C. App. LEXIS 27 (1992).

Execution may issue upon court-ordered alimony or support payments due and payable regardless of whether judgments are recorded. D.C. Code 1981, § 15-101. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

Failure of former husband to file formal opposition to former wife's motion to set aside stay of imprisonment imposed following finding that former husband was in contempt of support obligation ordered in divorce decree did not prevent his motion to reduce the amount of such obligation from providing the trial court with sufficient notice that he might be unable to meet his obligations under the stay of the contempt commitment, therefore obligating the trial court to hold a hearing and make a finding of ability to pay before revoking the stay. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Trial court did not err in denying motion of ex-wife that ex-husband be held in contempt for disregarding court order to render accounting of his income pursuant to property settlement agreement as to which there was dispute as to meaning of phrase "adjusted gross income." *Luchsinger v. Luchsinger*, 377 A.2d 1146, 1977 D.C. App. LEXIS 388 (1977).

Trial court, in action by wife for satisfaction of husband's obligation to support her under terms of property settlement agreement and absolute Maryland divorce judgment, did not abuse discretion in transferring nonresident husband's interest in property located in District of Columbia and held by parties as tenants by the entirety to former wife. D.C. Code §§ 11-1101, 16-910. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

Trial court has authority to award court costs and attorney's fees in an action to compel payment of child support under the terms of a property settlement agreement. D.C. Code § 16-916. *Eisenberg v. Eisenberg*, 357 A.2d 396, 1976 D.C. App. LEXIS 274 (1976).

Holding of husband's funds in escrow, to assure payment of arrearages of temporary support or alimony, whether pending initial appeal from divorce judgment or in anticipation of readjudication of cause on remand, lies within equitable authority of trial court arising from special statutory provisions governing divorce proceedings. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).



Neither traditional doctrine of supersedeas nor more restrictive philosophy reflected in related general statutory attachment procedures mandate limitation of divorce court's exercise of distinct and supplemental authority to enforce any order relating to divorce by attachment and by sequestration of husband's property. D.C. Code §§ 16-501 et seq., 16-911; D.C. Code SCR, Civil Rule 62-1. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Trial court, in divorce proceedings, did not abuse discretion in finding husband, who had repeatedly failed to make any significant attempt to satisfy requirements of previous lawful orders and judgments for arrearages, in willful contempt. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Extrinsic judgments entered in favor of husband are within purview of divorce court's sequestration authority. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Ordering of sequestration to enforce order of temporary alimony or maintenance rests within discretion of trial court and will not be disturbed absent clear abuse. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Trial court, in divorce proceedings, did not abuse discretion in ordering continued sequestration of husband's extrinsic tort settlement funds after judgment for arrearages of temporary support and maintenance, which was being enforced by said sequestration, was vacated and remanded for trial de novo. D.C. Code §§ 16-911, 16-911(3). *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Trial court, in divorce proceeding, did not abuse his discretion in ordering disbursement of husband's sequestered extrinsic tort settlement funds to wife towards satisfaction of divorce judgment finding against husband for \$5,625 in arrearages of temporary support and maintenance. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

In divorce action brought by wife, the court of general sessions had authority to imprison husband to compel him to pay his wife's counsel fees, pursuant to order contained in the final decree of divorce, despite contention that such order was not one made "during the pendency of an action." D.C. Code §§ 15-320, 16-911. *Thunberg v. Thunberg*, 283 A.2d 444, 1971 D.C. App. LEXIS 235 (1971).

Father sought to be held in contempt for failure to perform order for support of minor children must show by competent evidence reasonable excuse for nonperformance, and when he offers no valid reason for default, trial court has right to enforce compliance by imprison-

ment unless husband purges himself of the arrears. D.C. Code 1961, § 16-916. *Truslow v. Truslow*, 212 A.2d 763, 1965 D.C. App. LEXIS 239 (App. 1965).

Lack of finding on ability of husband to make support payments directed by court invalidated his commitment to jail as means of enforcing support. D.C. Code 1961, § 16-916. *Truslow v. Truslow*, 212 A.2d 763, 1965 D.C. App. LEXIS 239 (App. 1965).

The obligee's right to accrued but unpaid installments of a pendente lite support award, is absolute and vested, that the order creating that right is sufficiently final to be enforceable. The obligor is protected by the same finality. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

#### — Specific performance, enforcement.

Although divorced husband's salary had been reduced from \$60,000 to \$14,000 a year as a result of stockholders' derivative suit brought by former wife, where husband failed to explain adequately why he could not liquidate his personal assets worth more than \$500,000 or use them as collateral for a loan, trial court did not abuse its discretion in awarding specific performance of support agreement requiring him to pay \$150 a week for support of wife. *Marlowe v. Marlowe*, 310 A.2d 59, 1973 D.C. App. LEXIS 361 (1973).

Trial court could not commit husband for his contemptuous failure to comply with order for specific performance of agreement to pay wife \$200 monthly for her support though husband was able to make such payments but deliberately refused to carry out his agreement and money judgments against him could not be collected by ordinary process. D.C. Code §§ 15-320(c), 16-911, 16-912, 16-916. *O'Mara v. O'Mara*, 238 A.2d 586, 1968 D.C. App. LEXIS 129 (App. 1968).

#### Evidence.

Conflicting affidavits of the parties concerning basic issue whether default in payment of alimony was voluntary and therefore contemptuous were insufficient to provide basis for resolution of such issue. *Richardson v. Richardson*, 207 F.2d 133, 1953 U.S. App. LEXIS 2840 (C.A.D.C. 1953).

Failing in child support proceeding to take testimony and make findings as to exact amount of child's tuition paid by father and whether his payments represented all or only part of tuition actually due and owing was an abuse of discretion. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Burden of proving changed circumstances is on the party seeking modification of a child support order. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

A merely speculative possibility that evidence or testimony of which would support position set forth by executrix of husband's estate was lost or unavailable due to delay on part of former wife in enforcing her child support claims was insufficient to establish the type of prejudice which would merit the application of laches. D.C. Code 1973, § 15-101(b). *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

Trial court did not abuse its discretion in accepting wife's statement of estimated child support expenses which included allocated cost of a housekeeper, in divorce case. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

Evidence of wife's financial contributions was properly excluded where it was not sought to be introduced on issue of alimony but on question of wife's entitlement to property; and absence of any evidence offered to substantiate need for alimony constituted sufficient basis for denial of requested equitable relief, denominated "alimony in futuro." *Sirianni v. Sirianni*, 338 A.2d 101, 1975 D.C. App. LEXIS 388 (1975).

Award of alimony which appeared to be predicated only upon wife's assertion that she could use an additional \$50 per month was erroneous. *McEachnie v. McEachnie*, 216 A.2d 169, 1966 D.C. App. LEXIS 135 (App. 1966).

Virginia statutes relating to crimes of fornication and lewdness and lascivious behavior were inadmissible in action by divorced wife to collect arrears in support payments due from husband who asserted that wife and another man had engaged in sexual relations in Virginia. *Rodenberg v. Rodenberg*, 213 A.2d 510, 1965 D.C. App. LEXIS 244 (App. 1965).

Trial court was not bound to accept at face value husband's testimony with respect to income that he would receive from property, in divorce proceeding in determining amount of alimony that he must pay wife. *Smith v. Smith*, 210 A.2d 831, 1965 D.C. App. LEXIS 202 (App. 1965).

### Findings.

When alimony and support are at issue in domestic relations proceeding, trier of fact will generally be required to make findings of fact sufficient to demonstrate that all elements material to amount of award were given full consideration and manner in which facts in dispute were resolved. Domestic Relations Rule 52(a). *Foster-Gross v. Puente*, 656 A.2d 733, 1995 D.C. App. LEXIS 70 (1995).

Total termination of alimony for purportedly ill wife after 30 years of marriage, based on husband's oral motion for modification, required more comprehensive findings than those made by trial judge, who made no specific findings as to condition of each spouse as of date of distribution of proceeds from sale of

marital residence. *Carter v. Carter*, 615 A.2d 197, 1992 D.C. App. LEXIS 254 (1992).

Specific findings are necessary in order for reviewing court to ascertain whether or how conflicting claims concerning child support were resolved at trial; critical question is whether record contains sufficient findings as to ultimate controverted issues in case to determine whether trial court considered all relevant matters and to review its conclusions. *Powell v. Powell*, 457 A.2d 391, 1983 D.C. App. LEXIS 323 (1983).

In light of fact that trial court made no finding in divorce decree as to net income of either spouse, for purposes of determining amount of child support, and no finding specifically addressed issue of needs of child, case had to be remanded for appropriate findings on child's needs and respective abilities of parents to contribute to his support. *Brice v. Brice*, 411 A.2d 340, 1980 D.C. App. LEXIS 217 (1980).

In matters where alimony and support are at issue, the finder of fact will normally be required to make such findings of fact as will demonstrate that all elements material to the amount of the award were given full consideration and as will show the manner in which the facts in dispute were resolved. D.C. Code SCR, Dom.Rel.Rule 52(a). *Kieffer v. Kieffer*, 348 A.2d 887, 1975 D.C. App. LEXIS 286 (1975).

Where both counsel in wife's suit for maintenance submitted findings of fact in accordance with court's invitation to do so, court's adoption of one set of proposed findings rather than the other after hearing and weighing the evidence was not an abuse of the decisional process. D.C. Code § 16-916. *Skiff v. Skiff*, 277 A.2d 284, 1971 D.C. App. LEXIS 325 (1971).

### Forum.

Where husband and wife had owned houses and lived in the District of Columbia during their 19-year marriage except for times when husband was employed abroad, District was a proper forum for wife's action for maintenance, as against husband's contention that court should have declined to exercise jurisdiction because parties were mere "sojourners" in the District, and in any event statute did not require that party seeking maintenance be domiciled in the District. D.C. Code § 16-916. *Skiff v. Skiff*, 277 A.2d 284, 1971 D.C. App. LEXIS 325 (1971).

### Fraud.

Court may set aside for fraud installments of alimony after they have accrued like any other judgment and may always reduce them prospectively as of time when reduction is asked. *Dausuel v. Dausuel*, 195 F.2d 774, 1952 U.S. App. LEXIS 3021 (C.A.D.C. 1952).

A clear showing of fraud, directly related to the matter at issue, is ground for setting aside



divorce decree and support and maintenance award. *Mozick v. Mozick*, 245 A.2d 643, 1968 D.C. App. LEXIS 202 (App. 1968).

### Full faith and credit.

The decree of a state court having jurisdiction of the subject-matter and parties awarding divorce, and, incidentally, alimony, is entitled to the same faith and credit in other states that it has in the state where rendered; and an unconditional and final award of alimony, when the same remains unpaid, may be enforced by appropriate proceedings in other states. *Davis v. Davis*, 29 App.D.C. 258, 1907 U.S. App. LEXIS 5449 (1907).

Maryland order terminating former husband's child support obligation under divorce decree and ordering that case be dismissed without prejudice was not final, and thus, District of Columbia trial court was not required to give it full faith and credit, in suit brought by former wife seeking child support on basis that District of Columbia, unlike Maryland, provides right to child support until child is 21; separation agreement indicated that it was to be governed by District of Columbia law, former wife resided in District of Columbia for at least six months, and former husband, who apparently resided in Maryland, was employed in the District. D.C. Code 1981, §§ 16-916, 30-307; U.S. Const. Art. 4, § 1. *Rollins v. Rollins*, 602 A.2d 1121, 1992 D.C. App. LEXIS 30 (1992).

### Hearing.

If divorced wife's application for increase in alimony was to be decided against husband without a hearing, all controverted issues and all legitimate inferences raised by the pleadings were required to be resolved in his favor. *Russell v. Russell*, 142 F.2d 753, 1944 U.S. App. LEXIS 3499 (1944).

The trial court's refusal to grant father a third continuance of proceedings on mother's motion to hold father in contempt for failure to pay child support was not an abuse of discretion; mother's contempt petition had been pending for 18 months, father had already been granted two prior continuances, and father submitted an unsworn, typewritten statement purportedly from father's doctor in support of his request for a third continuance. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

To extent that factual issues had to be resolved, evidentiary hearing was necessary with respect to father's motion to set aside that portion of consent order setting his child support obligation, and, absent evidentiary hearing, court had inadequate basis upon which to determine whether consent order resulted from mistake, such that it should be set aside; father claimed that he was misled about whether amount used to calculate support took into

account income of child's legal custodian, but custodian argued that father was aware of basis for support amount to which parties agreed. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

Court, before determining property rights of husband and wife, should have held hearing on husband's claim that wife's counsel should not have been allowed to represent wife in action because of prior representation of husband. *Plater v. Plater*, 172 A.2d 142, 1961 D.C. App. LEXIS 245 (Cr.App. 1961).

### In general.

In a divorce and separate maintenance action, trial court is vested with broad discretion in determining rights of parties and their minor children to support. D.C. Code § 16-916(a). *Wright v. Wright*, 386 A.2d 1191, 1978 D.C. App. LEXIS 385 (1978).

District of Columbia does recognize common-law marriages. *Johnson v. Young*, 372 A.2d 992, 1977 D.C. App. LEXIS 454 (1977).

It was beyond power of trial court to state in its judgment for absolute divorce that because the subject of alimony was not mentioned in the property settlement agreement, the wife was foreclosed from claiming alimony at the present or any time in the future, since court could not render opinion on issue that may or may not arise. *Smith v. Smith*, 310 A.2d 229, 1973 D.C. App. LEXIS 371 (1973).

In exercising considerable measure of discretion which trial judges have in determining appropriate amount of alimony and child support, it is essential that they first determine net income or reasonable approximation of such from which a portion is to be set aside for alimony and support payments, as such items are recurring expenditures, and such a determination is also relevant to question of appropriate sum to be allowed opposing party for counsel fees and other expenses incident to litigation. *Mumma v. Mumma*, 280 A.2d 73, 1971 D.C. App. LEXIS 188 (1971).

### Judgment.

Court-ordered alimony or support payments constitute judgment debts as each installment becomes due and payable. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

Consent judgment in proceeding in which former wife moved to adjudge husband in contempt for failure to make required child support payments under divorce decree and to modify alimony provisions of decree was not final until entry by clerk. D.C. Code SCR, Civil Rules 58, 79(a). *Johnson v. Johnson*, 401 A.2d 962, 1979 D.C. App. LEXIS 354 (1979).

Although consent judgment in proceeding in which wife moved to adjudge husband in contempt for failure to make required child support payments under divorce decree and to

modify alimony provisions of decree was not final until entry, trial judge did not abuse her discretion in refusing to withhold entry of judgment on former husband's motion. D.C. Code SCR, Civil Rules 58, 79(a). *Johnson v. Johnson*, 401 A.2d 962, 1979 D.C. App. LEXIS 354 (1979).

In District of Columbia, each installment of alimony maturing without modification becomes judgment debt similar to any other judgment for money. *Fuller v. Fuller*, 190 A.2d 252, 1963 D.C. App. LEXIS 214 (App. 1963).

### **Jurisdiction.**

For purposes of jurisdiction in suits to enforce support, divorced wife is deemed to be a wife. *Wagner v. Wagner*, 293 F.2d 533, 1961 U.S. App. LEXIS 4127 (C.A.D.C. 1961).

Where court had jurisdiction of parties in divorced wife's proceeding against husband and his insurer to sequester disability benefit payments for satisfaction of alimony, the court had jurisdiction of the subject matter notwithstanding the husband was a nonresident and the insurer was a foreign corporation and the benefits were payable at the home office of the insurer. D.C. Code 1929, T. 24, Sec. 378. *Schlaefter v. Schlaefter*, 112 F.2d 177, 1940 U.S. App. LEXIS 4260 (1940).

Father, by voluntarily making payments through court pursuant to support order, consented to support order, clearly manifested his consent to jurisdiction of the court and waived any objection to failure of personal service. D.C. Code 1981, §§ 16-512, 16-916(c). *Ausbrooks v. Ausbrooks*, 493 A.2d 324, 1985 D.C. App. LEXIS 400 (1985).

Superior court had jurisdiction to enforce support obligations under Texas divorce decree. D.C. Code 1981, §§ 11-1101(3), 16-916(a). *Brown v. Dyer*, 489 A.2d 1081, 1985 D.C. App. LEXIS 345 (1985).

Defenses in action for separate maintenance of lack of personal jurisdiction of court and insufficiency of service of process are waivable. D.C. Code SCR, Dom.Rel. Rule 12(h). *Devoto v. Devoto*, 358 A.2d 312, 1976 D.C. App. LEXIS 288 (1976).

Where there has not been voluntary appearance of defendant or service of valid process in authorized manner in action for separate maintenance, defendant cannot be said to have waived through nonappearance his right to assert defenses which challenge jurisdiction of court over his person. *Devoto v. Devoto*, 358 A.2d 312, 1976 D.C. App. LEXIS 288 (1976).

In wife's action for separate maintenance, in which husband was served with summons and complaint at his residence in London, England, via registered mail, husband did not, by filing untimely answer which, inter alia, raised defense of insufficiency of service of process, waive defenses of lack of personal jurisdiction

and insufficiency of service of process. D.C. Code SCR, Dom.Rel. Rule 12(a), (h)(1). *Devoto v. Devoto*, 358 A.2d 312, 1976 D.C. App. LEXIS 288 (1976).

In view of inconclusive record on appeal from judgment of contempt for failure to pay alimony and child support ordered by divorce decree, Court of Appeals could not conclude that trial court had lacked jurisdiction to enter original divorce decree on ground that at the time complaint for divorce was originally filed neither party was a resident of the District of Columbia, and jurisdiction, once it attached, remained throughout subsequent proceeding to recover arrearage payments of alimony or support. *Richardson v. Richardson*, 276 A.2d 231, 1971 D.C. App. LEXIS 305 (1971).

### **Laches.**

Though amount of alimony and support for minor child under divorce judgment may not be modified retroactively, and though each installment as it becomes due becomes a judgment, defense of laches, which assumes the legal obligation, may partially or wholly prevent enforcement. *Brandt v. Brandt*, 276 F.2d 488, 1960 U.S. App. LEXIS 5344 (C.A.D.C. 1960).

The doctrine of laches did not provide a defense for father, in contempt action filed by mother due to father's failure to pay child support; father failed to offer any reason why mother's delay in filing for contempt was unreasonable, or how that delay prejudiced father's defense. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

Former husband made out a prima facie case of laches, in connection with former wife's claim to recover arrearage in child support arising when father unilaterally reduced his \$2,000 per month child support payments to \$1,500; father had changed his financial position significantly in reliance upon wife's acquiescence in change, over a period in excess of eight years, and father had paid for college education of daughter and for her wedding. *Kerrigan v. Kerrigan*, 642 A.2d 1324, 1994 D.C. App. LEXIS 94 (1994).

Husband who failed at time of divorce to raise 12-year limitation on enforcement of judgments as defense to claim for support and maintenance for which he was in arrears could not subsequently do so in motion for reduction of arrearage. D.C. Code 1981, § 15-101. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

If available, the defense of laches may bar an action, in whole or in part, for the collection of arrearages in child or spousal support payments under divorce decree or under a separation agreement. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Laches was a viable defense for former husband in proceeding instituted by former wife by



service of a writ of attachment on the federal agency responsible for disbursing husband's retirement pay, seeking enforcement of a consent order directing him to pay child support and alimony. D.C. Code 1981, § 15-101. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Evidence, including the fact of several contempt motions brought against former husband by former wife, that husband made no effort to conceal his whereabouts, and that wife had been employed full time but was facing retirement at time she commenced action, supported trial court's finding that wife's delay of nine years, from time husband discontinued support payments required to be made by consent decree until she filed a writ of attachment seeking enforcement of the consent order, was unreasonable, as regarded husband's contention that the doctrine of laches barred wife's claim. D.C. Code 1981, § 15-101. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

In determining whether doctrine of laches barred former wife's writ of attachment seeking enforcement of a consent order directing former husband to pay child support and alimony, in that former husband would be prejudiced by enforcement of the writ of attachment, trial court was required to consider former husband's present financial condition along with any other relevant factors. D.C. Code 1981, § 15-101. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Trial court should not have allowed former wife to recover from husband's estate child support payments which, because of the passage of time, might have been without effect as enforceable money judgments because they had matured more than 12 years before suit was filed and, therefore, had expired and ceased to have effect. *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

The defense of laches may partially or wholly bar an action to collect past-due support payments. D.C. Code 1973, §§ 15-101(b), 15-103. *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

Wife's delay of 21 years after separation before her first demand for support did not constitute laches barring her from permanent alimony in husband's divorce action on ground of five years' voluntary separation, in absence of showing of prejudice to husband, where wife had wished to be independent but her health deteriorated, and particularly where, during 12 of those years, she was mentally incompetent. D.C. Code 1951, §§ 11-776(b), 16-403. *Samuels v. Samuels*, 173 A.2d 214, 1961 D.C. App. LEXIS 262 (Cr.App. 1961).

Greater leniency is granted wife than that granted husband in regard to delay in bringing divorce action, but question whether alimony claim of party bringing action is barred by

laches because of delay in asserting claim must depend upon its own facts. *Shelton v. Shelton*, 153 A.2d 663, 1959 D.C. App. LEXIS 286 (Cr.App. 1959).

In divorce action, evidence, which revealed that wife had waited four years after she had been deserted by husband before asserting her claim for alimony and that wife could have sued for separate maintenance immediately following the desertion but could not sue for divorce until desertion had continued for two years, was sufficient to sustain trial court's finding that wife was not guilty of laches which would bar her claim for alimony. D.C. Code 1951, § 16-411. *Shelton v. Shelton*, 153 A.2d 663, 1959 D.C. App. LEXIS 286 (Cr.App. 1959).

### Modification.

#### — in general.

District Court may, in its discretion, reduce or cancel, at a later date, periodic installments of payments for maintenance as of date when application for such relief is made. *Fioravanti v. Fioravanti*, 231 F.2d 776, 1956 U.S. App. LEXIS 3466 (C.A.D.C. 1956).

Where divorce judgment provides for alimony, court has jurisdiction to grant or deny motion for increase in amount, even though award of alimony is based on agreement of parties. *Rogers v. Rogers*, 203 F.2d 61, 1953 U.S. App. LEXIS 3334 (C.A.D.C. 1953).

An award of alimony is separate from divorce in that court may reserve, either expressly or by reason of changing circumstances, the power to modify or set aside the incident of alimony. *Holmes v. Holmes*, 155 F.2d 737, 1946 U.S. App. LEXIS 2273 (1946).

Statutes which authorize the modification of decrees granting alimony are generally held not to authorize an award of alimony after a judgment of final divorce denies alimony. In *re Smith*, 3 B.R. 224, 1980 Bankr. LEXIS 5462 (1980).

A trial court may modify child support specified in settlement agreement only upon showing of: (1) change in circumstances which was unforeseen at time agreement was entered, and (2) that change is both substantial and material to welfare and best interests of children. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

While a court may find that a child support agreement does not provide a sufficient amount of money to meet a party's legal obligation to support and may order a larger sum to be paid, it may not modify such an agreement by reducing the agreed upon amount to the minimum the law would impose in the absence of an agreement, or to any sum different from that provided for in the agreement. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Standard for granting a modification to child support specified in a settlement agreement depends on whether the agreement was merged into a court's judgment, or incorporated by reference; the trial court has limited authority to alter a child support provision in a separation agreement that is incorporated, but not merged, into an order of divorce, due to presumption that a child support agreement negotiated between two parents is adequate to meet the child's foreseeable needs, and that at the time of the agreement the best interests of the child were a paramount consideration. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

If, at the time of modification of alimony award, the financial condition of the parties would not warrant an initial award of alimony, then the paying spouse's obligation should be extinguished. *DeGrazia v. DeGrazia*, 741 A.2d 1057, 1999 D.C. App. LEXIS 290 (1999).

Trial court had authority to modify amended final order so as to end former husband's support obligation once amount of former wife's mortgage was paid given exception to general rule against revisiting final orders for divorce order, order made clear, especially through express incorporation of transcripts, that situation was an evolving one and material beyond actual order was part of order, and final modification was consistent with intent of order being modified, which imposed support obligation to ensure mortgage was paid. *Smith v. Smith*, 673 A.2d 1281, 1996 D.C. App. LEXIS 56 (1996).

Trial court's grant of husband's motion to terminate spousal support based upon reweighing of equities between parties was abuse of discretion. *Hamel v. Hamel*, 539 A.2d 195, 1988 D.C. App. LEXIS 29 (1988).

After determining that original child support order in separation proceeding was based in part on incorrect financial information, trial court was not required to adhere to same formula for computing support payments after correct financial data were provided, and could consider entire issue of support de novo. *East v. East*, 536 A.2d 1103, 1988 D.C. App. LEXIS 14 (1988).

Where spouse files complaint seeking permanent maintenance, and later seeks modification of family division's order after a court in another jurisdiction has awarded other spouse ex parte divorce, family division may grant relief pursuant to statute providing for relief when former spouse has obtained foreign ex parte divorce as long as notice requirements of that statute are met. D.C. Code 1981, § 16-916(a, b). *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Former wife was not entitled to postdivorce order requiring former husband to pay alimony, where divorce decree relieved both parties from

any obligation to pay support or alimony until further order of the court based upon changed circumstances, but former wife failed to establish sufficient changed circumstances warranting such an order. *Carter v. Carter*, 473 A.2d 395, 1984 D.C. App. LEXIS 353 (1984).

Modification of child support provisions of divorce decree is not procedural means for reviewing equities of prior decree. D.C. Code § 16-916(a). *Tennyson v. Tennyson*, 381 A.2d 264, 1977 D.C. App. LEXIS 309 (1977).

While trial court has broad discretion in making original award of alimony or support, its discretion is limited when modifying such order by requirement that modification be anchored in original decree and reflect only changes since that decree. D.C. Code § 16-916(a). *Tennyson v. Tennyson*, 381 A.2d 264, 1977 D.C. App. LEXIS 309 (1977).

If it is shown that former wife is being supported in whole or in part by her paramour, former husband may come into court for a determination of whether alimony should be terminated or reduced; if paramour resides in wife's home without contributing anything toward purchase of food or payment of normal household bills, there may be a reasonable inference that wife's alimony is being used, at least in part, for benefit of paramour, in which case it could be argued with force that amount thereof should be modified accordingly. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Unchastity of a former wife, subsequent to divorce and allowance of alimony, does not by itself justify termination or modification of alimony payments, although it is a factor to be considered in appropriate circumstances. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Just as failure of wife to lead a chaste life will afford no ground for depriving her of her alimony as previously fixed, failure of husband to conduct himself properly will afford no ground for increasing her award. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Fact that husband initiated and obtained divorce between parties was not a controlling factor on question of later termination of alimony to wife. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Alimony obligation of former husband was not subject to being terminated on ground that former wife was living with an individual and having sexual relations with him in absence of evidence that former husband was unable to pay amount previously decreed or that former wife was in any lesser need for alimony payments. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).



Where motions to modify award of alimony and child support have been preceded by a judgment on a prior application for modification, change in circumstances asserted in support of the present motion must be one which has occurred after the disposition of the last preceding motion. *Kieffer v. Kieffer*, 348 A.2d 887, 1975 D.C. App. LEXIS 286 (1975).

Where, following hearing in February 1974, divorced husband's motion for reduction in alimony and child support was denied despite his loss of a major client, and order entered at that time was not appealed, such order stood as a binding determination that as of February the existing alimony and support award was not so onerous as to require modification, and thus in October 1974 hearing on new motion for reduction, husband was limited to change in circumstances since February, and loss of said client could not be placed in issue as showing change of circumstances. D.C. Code § 16-2328. *Kieffer v. Kieffer*, 348 A.2d 887, 1975 D.C. App. LEXIS 286 (1975).

Normally, at a minimum, trial court hearing a request for reduction in alimony or support should make a finding concerning the moving party's net income. *Kieffer v. Kieffer*, 348 A.2d 887, 1975 D.C. App. LEXIS 286 (1975).

Test to determine whether a support order should be modified is not the same as the test to determine whether a contract should be enforced; while changed financial circumstances may be the basis for modifying support order incorporated in divorce decree, they cannot provide the basis for modifying a contract between the parties. *Lanahan v. Nevius*, 317 A.2d 521, 1974 D.C. App. LEXIS 402 (1974).

Wife is always free to seek, upon a proper showing, an increase in amount of child support payments. *Roberson v. Roberson*, 297 A.2d 769, 1972 D.C. App. LEXIS 297 (1972).

Once an application for modification of maintenance order is filed with court, it may in its discretion reduce or cancel, at a later date, periodic installments of payments for maintenance as of date when application for such relief was made. *Rhodes v. Gilpin*, 264 A.2d 497, 1970 D.C. App. LEXIS 274 (App. 1970).

Reduction in mother's alimony for one year because of needless and unnecessary expenses of time and legal fees caused to father by mother in thwarting or attempting to thwart for her own selfish purposes father's enjoyment of his visitation rights with his children was not error. *Kahn v. Kahn*, 252 A.2d 901, 1969 D.C. App. LEXIS 241 (App. 1969).

Judge who, after hearing testimony and having access to financial statements of parties, determined that no change of circumstances had occurred to warrant substantial increase in support and maintenance of divorced wife and child since last order, but who granted divorced wife biweekly increase from \$85 to \$90 to

compensate for cost of living increase, did not abuse discretion. *Mozick v. Mozick*, 245 A.2d 643, 1968 D.C. App. LEXIS 202 (App. 1968).

Evidence supported finding that, under rule that voluntary assumption of new obligations by marrying a second time does not excuse a husband from prior obligation imposed by the court, no change of circumstances was present to relieve husband who had re-married from paying arrearages owed to his former wife for support of their minor child. *Armstrong v. Armstrong*, 241 A.2d 735, 1968 D.C. App. LEXIS 157 (App. 1968).

#### — Change in ability to pay, modification.

Whether or not husband has been guilty of contempt, court may in its discretion reduce amount of alimony if it finds that amount has become excessive because of husband's changed financial condition. *Richardson v. Richardson*, 207 F.2d 133 (C.A.D.C. 1953).

Where child support has been specified in separation agreement, a change in parents' financial circumstances alone cannot provide basis for modifying contract between parties. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Trial court did not apply incorrect standard when determining whether to change amount of alimony husband would be required to pay, even though judge found that husband had demonstrated a change in circumstances, rather than substantial and material change in conditions and circumstances; judge cited the *Alibrando* case which set forth the proper standard. *Meredith v. Meredith*, 614 A.2d 920, 1992 D.C. App. LEXIS 248 (1992).

Substantial increase in spouse's income can constitute material change in circumstances of parties warranting increase in alimony obligation. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Increase in noncustodial parent's ability to pay can, by itself, provide a proper basis for an increase in child and spousal support, beyond or without any proven increase in needs of children or other spouse. D.C. Code 1981, §§ 16-916(a), 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Increase in husband's income could support modification of his child support and alimony obligations, even if needs of his wife and children had not also increased. D.C. Code 1981, §§ 16-916(a), 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Former husband's motion to reduce support obligations ordered in divorce decree gave trial court sufficient notice that he might be unable to meet his obligations under order staying prison sentence for contempt of the support obligation and requiring that he pay a certain amount of the arrearages, and was in effect a request for relief from terms of the stay; there-

fore, finding that former husband had not proffered any defense or justification for his violation of the stay was plainly wrong and without evidence to support it, and thus trial court abused its discretion in revoking the stay and committing former husband to jail. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916, 17-305(a). *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Increase in alimony is not justified on basis of a slight growth in her husband's income where the wife's income has grown at a far more rapid pace. *Nelson v. Nelson*, 379 A.2d 713, 1977 D.C. App. LEXIS 263 (1977).

The husband's ability to pay is one factor to be considered in determining correct amount for an award of counsel fees in a proceeding seeking modification of child support and alimony. D.C. Code § 16-916. *Nelson v. Nelson*, 379 A.2d 713, 1977 D.C. App. LEXIS 263 (1977).

Where allowance for alimony becomes unduly burdensome, husband is free to seek a suitable adjustment by making a proper showing of a change in circumstances. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

If husband's inability to pay alimony or child support is self-inflicted or voluntary, it will not constitute ground for reduction in future payments. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

Voluntary reduction in income or self-imposed curtailment of earning capacity, absent substantial showing of good faith, will not constitute such change of circumstances as to warrant modification of support decree. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

In proceeding seeking modification of support decree, trial court did not abuse its discretion by refusing to modify alimony obligation of husband whose income was decreased as result of his election to voluntarily retire. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

If alimony award becomes unduly burdensome, husband is entitled to seek suitable adjustment by making proper showing of change in circumstances. *Butts v. Butts*, 192 A.2d 294, 1963 D.C. App. LEXIS 254 (App. 1963).

#### — Change in circumstance, modification.

Where divorced husband's earnings had been reduced approximately one-half subsequent to entry of original alimony decree and the number of minor children had been reduced from five to two children, one nearly 15 and other 20 years of age, court did not abuse its discretion in refusing to adjudge husband in contempt for failure to pay installments of alimony, and in reducing amount of alimony from \$125 to \$75

per month. *Eliasson v. Eliasson*, 98 F.2d 263, 1938 U.S. App. LEXIS 3202 (1938).

The change from joint custody to ex-wife having sole custody warranted an increase in ex-husband's child support obligation. *Wilson v. Craig*, 987 A.2d 1160, 2010 D.C. App. LEXIS 27 (2010).

Where a settlement agreement on child support is merged into a court's order, the court has discretion to modify its own order based on a showing by either party of a material change in the circumstances of either the child or the parents. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

A trial court may increase a child support payment provided in a settlement agreement if there arises an unforeseen change in circumstances that is substantial and material to the interests of the child, but it may not decrease such a child support agreement simply because the payor's financial circumstances have declined, or the child support payment subsequently proves to exceed the child's needs. *Duffy v. Duffy*, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

Trial judge had authority to terminate ex-husband's obligation to pay alimony to ex-wife on the basis of a change in circumstances, namely that ex-wife was now wealthier than ex-husband; there was nothing in equitable distribution statutes to suggest that an award of permanent alimony could not be terminated if the circumstances giving rise to the need for alimony no longer exist. D.C. Code 1981, §§ 16-912, 16-914(a). *DeGrazia v. DeGrazia*, 741 A.2d 1057, 1999 D.C. App. LEXIS 290 (1999).

Trial judge reasonably found that distribution to wife of almost \$50,000 more in proceeds from sale of marital residence than amount received by husband represented significant and material change of circumstances so as to support modification of alimony. *Carter v. Carter*, 615 A.2d 197, 1992 D.C. App. LEXIS 254 (1992).

Party seeking modification of support provisions of divorce decree is required to show substantial and material change in conditions and circumstances since entry of divorce decree. *Meredith v. Meredith*, 614 A.2d 920, 1992 D.C. App. LEXIS 248 (1992).

To modify a child support order the court must find a material change in the circumstances of the parties, generally one which affects either the supporting parent's ability to pay or the needs of the child and without such a showing the original order will remain in effect. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

Whether there has been a substantial and material change in circumstances so as to warrant modification of child support order is a question committed to the sound discretion of



the trial court. D.C. Code 1981, § 16-916. *Burnette v. Void*, 509 A.2d 606, 1986 D.C. App. LEXIS 326 (1986).

Where trial court's order modifies a prior order of support, court must also make written findings to support its conclusion that a material change in circumstances of parties or their children necessitates modification. D.C. Code § 16-916(a). *Wright v. Wright*, 386 A.2d 1191, 1978 D.C. App. LEXIS 385 (1978).

In determining amount of child support to be awarded wife and to be paid by husband, divorce court should consider not only change of circumstances, if any, since entry of prior support order in separate maintenance proceeding but also husband's ability to pay any increase that might be justified by those changes. D.C. Code § 16-916(a). *Wright v. Wright*, 386 A.2d 1191, 1978 D.C. App. LEXIS 385 (1978).

Despite divorce court's findings respecting current needs of children, where court did not find and record did not reflect a change in either needs of children or ability of parents to provide for those needs which would justify an increase in husband's obligation of support but, on the contrary, showed that two of the four minor children awarded support by prior order entered in separate maintenance proceeding had emancipated themselves, modification of prior order was not justified. D.C. Code § 16-916(a). *Wright v. Wright*, 386 A.2d 1191, 1978 D.C. App. LEXIS 385 (1978).

Modification of child support in final divorce decree is justified only when proponent of change bears burden of proof that there has been material change in needs of child or ability of parents to pay. D.C. Code § 16-916(a). *Tennyson v. Tennyson*, 381 A.2d 264, 1977 D.C. App. LEXIS 309 (1977).

Only substantially changed circumstances and conditions of parties will warrant a modification of a decree of divorce; thus, in order to reduce or terminate alimony payments, husband must show a change either in respect to his ability to support his wife or in wife's need for such support or both. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

A modification of alimony must reflect changed needs or changed financial resources and cannot be used to punish wife for her immoral conduct. D.C. Code § 16-913. *Alibrando v. Alibrando*, 375 A.2d 9, 1977 D.C. App. LEXIS 450 (1977).

Support decree can be modified only upon showing of substantial and material change in conditions and circumstances of involved parties since entry of decree; burden of demonstrating required change of circumstances rests upon party seeking modification. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

In proceeding seeking modification of support decree, determination of whether, under evidence presented, there has been substantial and material change in circumstances warranting modification rests within sound discretion of trial judge, whose decision will not be reversed on appeal absent clear showing of abuse of discretion. *Tydings v. Tydings*, 349 A.2d 462, 1975 D.C. App. LEXIS 297 (1975).

It was appropriate to depart from the Child Support Guideline based solely on the defendant's current gross wages, where the defendant received a substantial judgment award for a personal injury and thus had the available resources, and the fact that he had not provided significant support to his child in the past. *Bethel v. Bethel*, 119 WLR 885 (Super. Ct. 1991).

#### — Prospective modification.

Trial court did not have authority to order prospective decrease in wife's alimony award in anticipation of wife completing law school. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Trial court abused its discretion in awarding wife alimony that was to be reduced automatically upon the happening of certain events, as trial court was required to make alimony award a permanent, fixed amount for an indefinite period of time under statute governing alimony, and thus, court could not build in reductions based on speculation as to the parties' respective needs and abilities to pay in the future. D.C. Code 1981, §§ 16-912, 16-914. *Joel v. Joel*, 559 A.2d 769, 1989 D.C. App. LEXIS 112 (1989).

Imposition of time limitation upon alimony payments was improper. D.C. Code §§ 16-912, 16-914. *King v. King*, 286 A.2d 234, 1972 D.C. App. LEXIS 328 (1972).

#### — Retroactive modification.

Trial court did not effect improper retroactive modification of husband's alimony objection when court entered nunc pro tunc order terminating alimony upon disbursement of proceeds from sale of marital residence, where husband's duty to pay temporary alimony automatically lapsed, by terms of court order, upon distribution of proceeds of sale, and husband could not request reduction of alimony on account of changed circumstances as of that date because he was no longer paying any alimony. *Carter v. Carter*, 615 A.2d 197, 1992 D.C. App. LEXIS 254 (1992).

Where initial request for relief from alimony order had been denied on May 10 and only motion pending at time that court entered a final order reducing alimony was one filed on July 30, court could modify the award retroactively only to July 30. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Generally, trial judge cannot modify court-ordered installments of alimony or support after they have become due. *Steadman v. Steadman*, 514 A.2d 1196, 1986 D.C. App. LEXIS 428 (1986).

Rule prohibiting modification of installments of alimony or support after they have become due under a previously entered decree does not bar retroactive increase of installments which became due after motion seeking increase due to changed circumstances was filed. *Trezevant v. Trezevant*, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

Orders decreasing support or alimony may, in discretion of trial court, be made retroactive to date when application for such relief is made. *Trezevant v. Trezevant*, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

There can be no modification of installments of alimony or support after they have become due under a previously entered decree. *Trezevant v. Trezevant*, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

Orders increasing support or alimony may, in discretion of trial court, be made retroactive to date when application for such relief is made. *Trezevant v. Trezevant*, 403 A.2d 1134, 1979 D.C. App. LEXIS 409 (1979).

A court cannot retroactively consider a claim by husband that changed circumstances make continuation of child support payments to wife difficult. *Rhodes v. Gilpin*, 264 A.2d 497, 1970 D.C. App. LEXIS 274 (App. 1970).

### Notice.

Former wife, who did not receive service of state's petition for authority to sell former marital property or ex parte order nisi stating that sale to purchaser would be ratified and confirmed unless cause be shown to the contrary, was denied adequate notice of sale of marital property in violation of applicable rules. Civil Rules 5, 77(d). *Evans v. Evans*, 441 A.2d 979, 1982 D.C. App. LEXIS 283 (1982).

Where past installments of alimony have not been paid, divorced wife may petition court which rendered decree and obtain monetary judgment for amount of arrearages; where the husband has the right to urge modification of the unpaid installments, the arrearages may not be reduced to money judgment unless husband is given notice of petition and an opportunity to be heard. *Fuller v. Fuller*, 190 A.2d 252, 1963 D.C. App. LEXIS 214 (App. 1963).

Where personal jurisdiction is acquired in divorce proceeding and an order is made requiring future payments of support or alimony, a proceeding to render judgment for arrears in such payments is not a new and independent action requiring personal service, and all that is required is some form of notice reasonably calculated to give notice and an opportunity to

be heard. *Diesenhof v. Glass*, 186 A.2d 892, 1962 D.C. App. LEXIS 340 (Cr.App. 1962).

### Orders.

An order for payment of alimony pendente lite is in effect a final order enforceable by immediate execution, and though it is revocable and may be rescinded by court and may wholly fall by a final decision on the merits adverse to petitioner, as long as it remains in effect to the extent to which it has been enforced by payment or execution, it is an absolute finality and money so paid cannot be recovered back. D.C. Code 1940, § 16-410. *Cole v. Cole*, 67 F.Supp. 134, 1946 U.S. Dist. LEXIS 2304 (D.D.C.1946).

Consent order is order of the court, indistinguishable in its legal effect from any other court order, and, therefore, subject to enforcement like any other court order. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

Consent order is a contract which must be construed within its four corners, and it should generally be enforced as written, absent showing of good cause to set it aside, such as fraud, duress, or mistake. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

Superior Court order for child support issued against father, which was properly entered initially in divorce action where court had jurisdiction over father, did not lose its validity when either or both parents moved out of the District and resided elsewhere. D.C. Code 1981, §§ 16-916(c), 16-4503(a). *Desai v. Fore*, 711 A.2d 822, 1998 D.C. App. LEXIS 89 (1998).

In absence of an appeal from the divorce decree, provision of the decree, providing that both parties be relieved from any obligation to pay support or alimony until further order of the court based upon changed circumstances, became the law of the case for purposes of subsequent hearings on changed circumstances. *Carter v. Carter*, 473 A.2d 395, 1984 D.C. App. LEXIS 353 (1984).

A "consent order" is a type of contract and places the parties in a contractual relationship; however, it is also an order of the court and subject to enforcement like any other court order. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Comparison of basis for child support in final divorce decree with circumstances existing at time vacation of support is sought is necessary to give full effect to finality of original support order. D.C. Code § 16-916(a). *Tennyson v. Tennyson*, 381 A.2d 264, 1977 D.C. App. LEXIS 309 (1977).

Whether or not father was to receive, on motion to adjudicate father in contempt for failure to comply with most recent court order for payment of support for divorced wife and their child, credit for amounts paid in excess of



initial court order but in keeping with provisions of separation agreement incorporating such initial court order was matter within discretion of trial court, and in view of court's findings that needs of minor child could not be satisfied by payments made in the past, denial of such credit was not an abuse of discretion. D.C. Code § 16-916(a). *Foley v. Foley*, 336 A.2d 549, 1975 D.C. App. LEXIS 358 (1975).

### **Pension and disability benefits.**

Disability benefits payable to husband by insurer could be sequestered for satisfaction of husband's alimony obligation to divorced wife notwithstanding policies provided for continuance of disability payments only during husband's total and permanent disability and required him to make periodic proof that disability continued as against contention that the obligation of insurer to make disability payments did not constitute a "debt" or "income". D.C. Code Supp. I V, T. 5, § 220p. *Schlaefcr v. Schlaefcr*, 112 F.2d 177, 1940 U.S. App. LEXIS 4260 (1940).

Even though life policies designated payments which insurer was under obligation to make to insured as "disability benefits", such designation did not make the insurer a trustee to see that the funds were applied to particular purposes by or for the benefit of the insured, as regards question whether the payments could be sequestered for satisfaction of claim of insured's divorced wife for alimony. D.C. Code Supp. I V, T. 5, § 220p. *Schlaefcr v. Schlaefcr*, 112 F.2d 177, 1940 U.S. App. LEXIS 4260 (1940).

### **Pleadings.**

Wife was not required to file separate complaint seeking permanent maintenance on basis of earlier child support award in District of Columbia after husband obtained ex parte divorce in Virginia. D.C. Code 1981, § 16-916(a, b). *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

### **Presumptions.**

Where no appeal was made from order directing husband to pay maintenance to wife, it would be assumed, on motion made many months after order to discontinue the maintenance, even in absence of findings of fact in support of the maintenance award, that a proper showing in that respect had been made. *Brooker v. Brooker*, 211 F.2d 648, 1954 U.S. App. LEXIS 2598 (C.A.D.C. 1954).

### **Res judicata.**

Where wife was never served and did not appear in husband's divorce action in Florida in which husband was granted divorce on ground of wife's "extreme cruelty," issue of wife's conduct was not res judicata in her action for maintenance. D.C. Code § 16-916. *Skiff v. Skiff*,

277 A.2d 284, 1971 D.C. App. LEXIS 325 (1971).

Divorced wife seeking, on second motion for increased support, to avoid bar of res judicata as to matters preceding first motion, failed to adduce evidence establishing that in any prior hearing divorced husband had not fully and truthfully revealed his financial condition. *Mozick v. Mozick*, 245 A.2d 643, 1968 D.C. App. LEXIS 202 (App. 1968).

Final order of Maryland court terminating father's support obligations in accordance with the terms of a separation agreement was entitled to res judicata effect. *Rollins v. Rollins*, 118 WLR 2493 (Super. Ct. 1990).

### **Review.**

Petition to United States Court of Appeals for allowance of appeal from a judgment of District of Columbia Court of Appeals would be denied by United States Court of Appeals on ground that further review was not merited, where it had remanded case so that D.C. Court of Appeals might consider whether denial of support to wife on ground of misconduct was permissible, absent determination of effect of such denial on her ability to provide proper care for children entrusted to her custody, and D.C. Court of Appeals adhered to opinion and stated that record made plain that Court of General Sessions determined greatest amount that husband could reasonably pay and ordered such sum to be paid for support of children. D.C. Code 1961, § 16-415. *Lattisaw v. Lattisaw*, 359 F.2d 258, 1966 U.S. App. LEXIS 7000 (C.A.D.C. 1966).

Court of Appeals reviews divorce court's decision regarding modification of support obligations under abuse of discretion standard. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

Where wife did not appeal from dismissal of her complaint for divorce and husband did not question her right to support or contend that she should have been awarded a lesser amount and there was no possibility upon remand that lesser amount would be awarded, wife by accepting monthly support payments from husband was not precluded from appealing on ground that award was inadequate. *Tennyson v. Tennyson*, 263 A.2d 643, 1970 D.C. App. LEXIS 250 (App. 1970).

### **Right to child support.**

Voluntary reduction of income or self-imposed curtailment of earning capacity ordinarily does not affect spouse's obligation to pay child support. D.C. Code 1981, § 16-916.1. *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994).

A divorced wife is entitled to an order compelling her former husband to contribute to cost of raising children of marriage over whom she

has been granted custody. *Smith v. Smith*, 344 A.2d 221, 1975 D.C. App. LEXIS 243 (1975).

Welfare of children of parties to divorce is paramount on questions of support. *Brown v. Brown*, 260 A.2d 675, 1970 D.C. App. LEXIS 195 (App. 1970).

### Separate maintenance.

In action for separate maintenance and support where husband is professional man with history of substantial earnings, extensive real estate holdings, and large cash flow of bank deposits, it is sufficient that trial court satisfy itself from sum total of evidence that husband has ability to maintain his wife and children in manner comparable to standard of living to which parties were accustomed at time of separation, and has refused to do so. D.C. Code § 16-916(a). *Cefaratti v. Cefaratti*, 315 A.2d 142, 1974 D.C. App. LEXIS 361 (1974).

Evidence in wife's suit for separate maintenance supported finding that wife could reasonably expect income for the following year in the amount of \$13,000 to \$14,000. D.C. Code § 16-916. *Skiff v. Skiff*, 277 A.2d 284, 1971 D.C. App. LEXIS 325 (1971).

Trial court did not abuse its discretion in awarding wife support and maintenance in the amount of \$200 per month even though wife's annual income from her own sources was approximately \$13,000 to \$14,000 and wife owned securities of value of "at least \$370,000," and husband had no net worth and an annual income of \$19,704. D.C. Code § 16-916. *Skiff v. Skiff*, 277 A.2d 284, 1971 D.C. App. LEXIS 325 (1971).

When wife left her husband and marital abode without just cause, such desertion was a bar to her claim for separate maintenance and support. D.C. Code § 16-916(a). *Lee v. Lee*, 267 A.2d 824, 1970 D.C. App. LEXIS 314 (App. 1970).

Award of counsel fees to wife, in her suit for separate maintenance and support, was not clear abuse of discretion, notwithstanding that wife had left her husband and marital abode without just cause, which was bar to her claim for separate maintenance and support. D.C. Code § 16-916(a). *Lee v. Lee*, 267 A.2d 824, 1970 D.C. App. LEXIS 314 (App. 1970).

Evidence in separate maintenance action consisting of implied admissions by husband was insufficient to support finding of husband's adultery. D.C. Code 1961, § 16-916. *Snyder v. Snyder*, 222 A.2d 850, 1966 D.C. App. LEXIS 224 (App. 1966).

Charge of adultery in separate maintenance action must be supported by clear and satisfactory evidence. D.C. Code 1961, § 16-916. *Snyder v. Snyder*, 222 A.2d 850, 1966 D.C. App. LEXIS 224 (App. 1966).

Mere circumstances of suspicion are not enough to sustain charge of adultery in separ-

ate maintenance suit. D.C. Code 1961, § 16-916. *Snyder v. Snyder*, 222 A.2d 850, 1966 D.C. App. LEXIS 224 (App. 1966).

Standard of proof for adultery in separate maintenance suit is no less than that in divorce suit. D.C. Code 1961, § 16-916. *Snyder v. Snyder*, 222 A.2d 850, 1966 D.C. App. LEXIS 224 (App. 1966).

Where wife was awarded separate maintenance largely on ground of husband's adultery but wife had never claimed that she was living apart because of husband's adultery and claimed only that she was living apart because he had left against her will, and wife had testified as to willingness to overlook husband's conduct, award was reversed even though record may have sustained award completely disregarding charge of adultery. D.C. Code 1961, § 16-916. *Snyder v. Snyder*, 222 A.2d 850, 1966 D.C. App. LEXIS 224 (App. 1966).

### Separation agreements.

Trial court had authority to modify child support and to determine any arrearage, notwithstanding separation agreement between former husband and former wife. *Cox v. Cox*, 707 A.2d 1297, 1998 D.C. App. LEXIS 36 (1998).

Standard for modifying child support provision of parties' separation agreement incorporated in divorce decree was whether there had been unforeseen change of circumstances which was substantially material to welfare and best interest of children, notwithstanding intervening Uniform Reciprocal Enforcement of Support Act order. D.C. Code 1981, §§ 16-916, 30-319. *Albus v. Albus*, 503 A.2d 1229, 1986 D.C. App. LEXIS 263 (1986).

Order wherein a trial court increased support payments at issue from \$375, as contractually required, to \$656.25 per month did not have effect of nullifying separation agreement, but simply imposed an additional obligation of support upon husband for his minor son, and once obligation expired upon the son's reaching his majority at 21, the husband's only duty was to pay \$375 a month until the son completed his education, as separation agreement required, and the court lost its jurisdiction to continue enforcement of the supplemental portion of the support payments and could not hold the husband in contempt for his failure to make the supplemental increase. D.C. Code 1981, § 16-916(c). *Norris v. Norris*, 473 A.2d 380, 1984 D.C. App. LEXIS 346 (1984).

A court has no authority to modify a separation agreement which has not been merged with a divorce decree. D.C. Code 1981, § 16-916(c). *Norris v. Norris*, 473 A.2d 380, 1984 D.C. App. LEXIS 346 (1984).

Right of wife, who is a party to separation and property settlement agreement, to maintenance and support vests as each installment



becomes due, which then becomes a judgment debt similar to any other judgment for money. D.C. Code §§ 16-911, 16-912, 16-916(d). *Trigo v. Riggs Nat'l Bank*, 338 A.2d 445, 1975 D.C. App. LEXIS 381 (1975).

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, was sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. D.C. Code §§ 16-911, 16-912, 16-916(d). *Trigo v. Riggs Nat'l Bank*, 338 A.2d 445, 1975 D.C. App. LEXIS 381 (1975).

Wife was precluded from seeking support for herself in excess of that provided by separation agreement, but court was not precluded from increasing child support payments in excess of monthly sum provided for by the agreement, where court found that needs of child had increased and husband was able to pay. D.C. Code § 16-916(a). *Foley v. Foley*, 336 A.2d 549, 1975 D.C. App. LEXIS 358 (1975).

Where husband and wife agreed by separation agreement that court order concerning support for wife and child would remain in force and order was incorporated in agreement, subsequent divorce decree did not abrogate the order, which continued in force except as modified by subsequent order. D.C. Code § 16-916(a). *Foley v. Foley*, 336 A.2d 549, 1975 D.C. App. LEXIS 358 (1975).

Where the child support formula substituted by trial court for formula provided in separation agreement, which was not incorporated in divorce decree, could result in husband paying a lower amount than he would have under the original agreement, court's order could not be upheld on ground that it merely "interpreted" separation agreement and did not in fact modify separation agreement. *Lanahan v. Nevius*, 317 A.2d 521, 1974 D.C. App. LEXIS 402 (1974).

Denial of support and maintenance to wife did not constitute abuse of discretion, where parties themselves had agreed to a temporary separation approximately four and a half years earlier wherein each party would be self-supporting, and it did not appear that wife, who resided in Poland and was employed in scientific field, was in need of additional assistance to maintain herself. D.C. Code § 16-913.

*Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 1972 D.C. App. LEXIS 276 (1972).

Property settlement agreement which was supported by mutual promises, including waiver by each of rights in the property and estate of the other, and which was incorporated into void Nevada divorce decree was not invalid on theory of lack of consideration. D.C. Code § 16-916. *Jacobson v. Jacobson*, 277 A.2d 280, 1971 D.C. App. LEXIS 319 (1971).

Where wife did not successfully carry burden of proving invalidity of separation agreement, and no fraud, duress, concealment, or overreaching on part of husband was found, setting aside of provisions of separation agreement and ordering payment of alimony and child support on different terms was error. *Davis v. Davis*, 268 A.2d 515, 1970 D.C. App. LEXIS 324 (App. 1970).

Statute did not compel court to award, as alimony, amount which husband agreed to pay wife in separation agreement. D.C. Code § 16-913. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

Whether or not to incorporate a separation agreement between husband and wife into divorce decree is a matter entirely within discretion of trial court. *Alves v. Alves*, 262 A.2d 111, 1970 D.C. App. LEXIS 215 (App. 1970).

Refusal to incorporate support provisions of a separation agreement, entered into by the parties approximately four years before husband brought his divorce action, into divorce decree granted husband on ground of five years' voluntary separation without cohabitation, was discretionary. *Montalbo v. Montalbo*, 175 A.2d 786, 1961 D.C. App. LEXIS 293 (Cr.App. 1961).

### Temporary support.

Award of maintenance and support pendente lite in suit for absolute divorce is within discretion of trial court unless there is a showing of abuse of discretion. *Zook v. Zook*, 233 F.2d 369, 1956 U.S. App. LEXIS 3160 (C.A.D.C. 1956).

An order directing payment of alimony pendente lite is a judgment "in personam" which can be entered only against a defendant who has been personally served in the territorial jurisdiction of the court or a defendant who has appeared. *Gaines v. Gaines*, 157 F.2d 521, 1946 U.S. App. LEXIS 2749 (1946).

The trial court's statutory discretion as to awarding alimony pendente lite in divorce suit is not an arbitrary but a judicial discretion, and it is an abuse of discretion to deny relief for an erroneous reason. D.C. Code 1929, T. 14, § 70. *Pedersen v. Pedersen*, 107 F.2d 227, 1939 U.S. App. LEXIS 2722 (1939).

The trial court's refusal to grant wife's application for support pendente lite in suit for limited divorce, if based on fact that husband and wife were living in same house which parties owned jointly, was erroneous, notwith-

standing trial court's discretion as to awarding alimony pendente lite. D.C. Code 1929, T. 14, § 70. *Pedersen v. Pedersen*, 107 F.2d 227, 1939 U.S. App. LEXIS 2722 (1939).

An award of alimony pendente lite to the wife in a husband's suit for divorce was not an abuse of discretion, where the view taken by the court of the case made by the pleadings was not an unreasonable one, though different from the view taken by plaintiff. *Topham v. Topham*, 265 F. 458, 1920 U.S. App. LEXIS 1421 (1920).

As respects right to temporary alimony, it is the constant purpose of the courts to compose marital differences to the end that families may be kept together. *Cooper v. Cooper*, 30 F.Supp. 151, 1939 U.S. Dist. LEXIS 1965 (D.D.C.1939).

Although, by its own terms, statute allowing courts to award temporary support in child custody proceedings does not provide a time limit by which trial court must decide petitioner's motion, trial court, consistent with stated purpose of pendente lite relief, must consider motions for temporary child support in timely manner, particularly after petitioner makes it clear that her financial situation will become critical without support from the other parent. *Johnson v. Washington*, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

"Permanent" alimony is generally so characterized to distinguish it from "temporary" alimony, i.e., alimony "pendente lite," or from other special forms of alimony, and it is not designed to continue in perpetuity where the reason for the award has ceased to exist. *DeGrazia v. DeGrazia*, 741 A.2d 1057, 1999 D.C. App. LEXIS 290 (1999).

Temporary alimony is allowance made to wife for her maintenance during pendency of action for divorce and it is awarded to furnish wife means of living, in order that she may not become charge upon state while her rights are being adjudicated. D.C. Code 1981, § 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Only so long as a suit for divorce is pending does applicable statute authorize court to require husband to pay temporary alimony and to enforce obedience by attachment and imprisonment and any allowance of alimony which is to be effective after suit for divorce has ceased to pend must be made under permanent alimony code provision. D.C. Code § 16-911. *Burtoff v. Burtoff*, 418 A.2d 1085, 1980 D.C. App. LEXIS 353 (1980).

Purpose of temporary alimony is to furnish a needy spouse with funds sufficient to prevent the spouse from becoming a public charge while his or her rights are being adjudicated. D.C. Code § 16-911. *Burtoff v. Burtoff*, 418 A.2d 1085, 1980 D.C. App. LEXIS 353 (1980).

Where it was found that wife who sought divorce was unable to support herself and that

husband was capable of rendering financial assistance, trial court could award alimony pendente lite without inquiring into merits of divorce action. D.C. Code § 16-911. *Kreuz v. Kreuz*, 354 A.2d 867, 1976 D.C. App. LEXIS 512 (1976).

Though trial court, in determining whether to order husband to pay alimony pendente lite to wife, may inquire into merits of divorce action to determine probability of ultimate success, the decision to hear such evidence is a matter entrusted to trial court's discretion. D.C. Code § 16-911. *Kreuz v. Kreuz*, 354 A.2d 867, 1976 D.C. App. LEXIS 512 (1976).

Ordering of temporary alimony or maintenance rests within discretion of trial court and will not be disturbed absent clear abuse. *Campbell v. Campbell*, 353 A.2d 276, 1976 D.C. App. LEXIS 478 (1976).

Granting or refusing of temporary alimony or maintenance rests in discretion of trial court and is not to be disturbed by appellate court except for clear abuse. *Dennis v. Dennis*, 140 A.2d 180, 1958 D.C. App. LEXIS 298 (Cr.App. 1958).

Where it appears that a suit for divorce was brought at the instigation of plaintiff's relatives, who promised to take care of her, and to provide means for prosecuting the suit, alimony pendente lite will not be allowed until a plea to the jurisdiction of the court has been disposed of. *Bradstreet v. Bradstreet*, 17 D.C. 502 (D.C.Sup. 1888).

### Validity.

The D.C. Code § 30-401 requirement that a parent pay child support after a child's 18th birthday is not an unconstitutional application to a non-custodial parent because this section places an equal obligation on all parents; there is no impermissible distinction between custodial and non-custodial parents. *Monroe v. Monroe*, 125 WLR 1081 (Super. Ct. 1997).

### Validity of guidelines.

Child support guideline establishes method by which support is to be established provided that there is a duty to support. *Fields v. McPherson*, 756 A.2d 420, 2000 D.C. App. LEXIS 174 (2000).

Child Support Guideline that was adopted as Superior Court rule conflicted with existing substantive law and was thus invalid. D.C. Code 1981, § 11-946. *Fitzgerald v. Fitzgerald*, 566 A.2d 719, 1989 D.C. App. LEXIS 239 (1989).

"Fail" does not mean "knowingly fail," and accordingly, no mens rea requirement need be or should be implied in subsection (c). *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).



## § 16-916.01. Child Support Guideline.

(a) In any case that involves the establishment of child support, or in any case that seeks to modify an existing support order, if the judicial officer finds that there is an existing duty of child support, the judicial officer shall conduct a hearing on child support, make a finding, and enter a judgment in accordance with the child support guideline (“guideline”) established in this section.

(b) In every action for divorce or custody, and in every proceeding for protection involving an intrafamily offense, instituted pursuant to Chapter 10 of Title 16, where a party has a legal duty to pay support to another party, the judicial officer shall inquire into the parties’ child support arrangements. If the party entitled to child support has not requested support, or if the parties have agreed against the entry of a support order, the judicial officer shall advise the parties, regardless of whether they are represented by counsel, of the parties’ entitlement to receive and obligation to pay child support under the guideline.

(c) The guideline shall be based on the following principles:

(1) The guideline shall set forth an equitable approach to child support in which both parents share legal responsibility for the support of the child.

(2) The subsistence needs of each parent shall be taken into account in the determination of child support.

(3) A parent has the responsibility to meet the child’s basic needs, as well as to provide additional child support above the basic needs level.

(4) Application of the guideline shall be gender neutral.

(5) The guideline shall be applied consistently regardless of whether either parent is a Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility, or General Assistance for Children recipient, or a recipient of benefits under any substantially similar means-tested public assistance program.

(6) The guideline shall be applied presumptively.

(d)(1) For the purposes of this section, the term “gross income” means income from any source, including:

(A) Salary or wages, including overtime, tips, or income from self-employment;

(B) Commissions;

(C) Severance pay;

(D) Royalties;

(E) Bonuses;

(F) Interest or dividends;

(G) Income derived from a business or partnership after deduction of reasonable and necessary business expenses, but not depreciation;

(H) Social Security;

(I) Veteran’s benefits;

(J) Insurance benefits;

(K) Worker’s compensation;

(L) Unemployment compensation;

(M) Pension;

(N) Annuity;

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- (O) Income from a trust;
  - (P) Capital gains from a real or personal property transaction, if the capital gains represent a regular source of income;
  - (Q) A contract that results in regular income;
  - (R) A perquisite or in-kind compensation if the perquisite or in-kind compensation is significant and represents a regular source of income or reduces living expenses, such as use of a company car or reimbursed meals;
  - (S) Income from life insurance or an endowment contract;
  - (T) Regular income from an interest in an estate, directly or through a trust;
  - (U) Lottery or gambling winnings that are received in a lump sum or in an annuity;
  - (V) Prize or award;
  - (W) Net rental income after deduction of reasonable and necessary operating costs, but not depreciation; or
- (X) Taxes paid on a party's income by an employer or, if the income is nontaxable, the amount of taxes that would be paid if the income were taxable.
- (2) For a parent subject to self-employment tax,  $\frac{1}{2}$  of Social Security and Medicare taxes due and payable on current income shall be deducted from the parent's gross income before the child support obligation is computed.
- (3) Alimony paid by either parent to the other parent subject to the support order shall be deducted from the gross income of the parent paying the alimony before the child support obligation is computed. Alimony received from any person, including alimony received from the other parent subject to the support order, shall be added to the gross income of the parent receiving the alimony before the child support obligation is computed. Deductions and additions for alimony shall be made regardless of whether the alimony is court ordered or paid pursuant to an agreement.
- (4) A support order that is being paid by either parent shall be deducted from the parent's gross income before the child support obligation is computed.
- (5) Each parent shall receive a deduction from gross income for each child living in the parent's home for whom the parent owes a legal duty to pay support, if the child is not subject to the support order. The amount of the deduction shall be calculated by determining the basic child support obligation for the additional child in the parent's home pursuant to subsection (f)(2) of this section, using only the income of the parent entitled to the deduction. This figure shall be multiplied by 75%, and the resulting amount subtracted from the parent's gross income before the child support obligation is computed.
- (6) Gross income shall not include benefits received from means-tested public assistance programs, such as Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility, General Assistance for Children, Supplemental Security Income, or Food Stamps.
- (7) Gross income shall not include income received by or on behalf of a child in the household of a parent or third-party custodian, including foster care and guardianship payments, if the income is for a child who is not subject to the support order.
- (8) If a child subject to the support order is in the care of a third party,



both parents may be required to pay child support. The income of the third party shall not be considered in the calculation of child support.

(9) If a child subject to the support order receives Social Security Disability Insurance ("SSDI") derivative benefits through either parent, the amount of the derivative benefit paid to the child shall be included in the gross income of the parent from whom the benefit derives.

(10) If the judicial officer finds that a parent is voluntarily unemployed or underemployed as a result of the parent's bad faith or deliberate effort to suppress income, to avoid or minimize the parent's child support obligation, or to maximize the other parent's obligation, the judicial officer may impute income to this parent and calculate the child support obligation based on the imputed income. The judicial officer shall not impute income to a parent who is physically or mentally unable to work or who is receiving means-tested public assistance benefits. The judicial officer shall issue written factual findings stating the reasons for imputing income at the specified amount.

(11) The judicial officer shall determine the adjusted gross income of each parent based on evidence, including pay stubs, tax returns, employer statements, affidavits, and oral testimony provided under oath.

(e) The judicial officer shall determine each parent's adjusted gross income by making the additions to and deductions from gross income specified in subsection (d) of this section.

(f)(1) Except in cases of shared physical custody as described in subsection (q) of this section, the child support obligation shall be calculated according to the following procedure:

(A) Determine each parent's adjusted gross income according to subsection (e) of this section.

(B) Using the parents' combined adjusted gross income, locate the basic child support obligation from the Schedule of Basic Child Support Obligations referenced in subsection (w) of this section. If the parents' combined adjusted gross income falls between the amounts shown in the schedule, the basic child support obligation shall be rounded up to the next higher amount.

(C) Calculate each parent's percentage share of combined adjusted gross income by dividing each parent's adjusted gross income by the combined adjusted gross income.

(D) Multiply the basic child support obligation from paragraph (2) of this subsection by each parent's percentage share of combined adjusted gross income from paragraph (3) of this subsection to determine each parent's share of the basic child support obligation. When the parents do not have shared physical custody as defined in subsection (q) of this section, the parent with whom the child does not primarily reside shall be the parent with a legal duty to pay support. The parent with a legal duty to pay support shall pay that parent's share of the basic child support obligation to the parent with whom the child primarily resides. Adjustments for health insurance premiums, extraordinary medical expenses, child care expenses, and SSDI derivative benefits shall be made to this amount according to subsections (i) through (1) of this section. The parent with whom the child primarily resides shall be presumed to spend that parent's own share of child support directly on the child.

(2) Worksheet A in Appendix II may be used to calculate the child support obligation under this subsection.

(g)(1)(A) A parent with a legal duty to pay support may maintain a self-support reserve as provided in this subsection. The self-support reserve shall be calculated at 133% of the United States Department of Health and Human Services poverty guideline per year for a single individual. The self-support reserve shall be updated by the Mayor every 2 years with the updated amount to be published in the District of Columbia Register and made effective as of April 1.

(B) As of April 1, 2007, the self-support reserve shall be \$12,382.

(C) As of April 1, 2009, the self-support reserve shall be \$14,404. The Child Support Services Division of the Office of the Attorney General shall act promptly to ensure that all child support orders entered into on or after April 1, 2009 are modified, as appropriate and as permitted under applicable law, to incorporate the April 1, 2009 adjustment.

(2) A parent with a legal duty to pay support, but with adjusted gross income below the self-support reserve, shall be considered unable to contribute the amount determined under subsection (f) of this section. The judicial officer shall treat a parent at this level of income on an individual basis, and shall order the parent to pay only the amount that the judicial officer determines the parent is able to pay, while meeting personal subsistence needs.

(3) Where the judicial officer finds that a parent with adjusted gross income below the self-support reserve has the ability to pay child support under paragraph (2) of this subsection, there shall be a presumption that the parent can pay a minimum amount of \$50 per month, while meeting personal subsistence needs. The presumption may be rebutted downward to \$0 or upward above \$50 per month by evidence of resources or circumstances affecting the parent's ability to pay, including age, employability, disability, homelessness, incarceration, inpatient substance abuse treatment, other inpatient treatment, or other appropriate circumstances. The judicial officer shall issue written factual findings stating the reasons for the entry of a minimum order below or above \$50 per month.

(h) The guideline shall not apply presumptively in cases where the parents' combined adjusted gross income exceeds \$240,000 per year. In these cases, the child support obligation shall not be less than the amount that the parent with a legal duty to pay support would have been ordered to pay if the guideline had been applied to combined adjusted gross income of \$240,000. The judicial officer may exercise discretion to order more child support, after determining the reasonable needs of the child based on actual family experience. The judicial officer shall issue written factual findings stating the reasons for an award of additional child support.

(i)(1) All orders shall contain terms providing for the payment of medical expenses for the child in accordance with section 16-916.

(2) Amounts paid by either parent for health insurance premiums for a child subject to the support order shall be divided between the parents in proportion to their respective adjusted gross incomes and added to the parents' respective shares of the basic child support obligation.



(3) A parent shall present proof of the increase in a health insurance premium incurred as a result of the addition of the child to the health insurance policy. The proof provided shall identify clearly that the source of the increase of the health insurance premium is the child subject to the support order. The cost to add the child shall be reasonable.

(4) If a parent has family health insurance coverage in the parent's health insurance plan for a second family, the addition of the child who is subject to the support order need not result in an additional cost of health insurance coverage to the parent. The parent shall provide proof that the child has been added to the health insurance coverage. An adjustment shall not be made if there is no additional cost of health insurance coverage to the parent.

(5) Health insurance coverage shall be considered reasonable in cost if the cost to the obligated parent of providing coverage for the children subject to the support order pursuant to § 16-916.01(i)(3) does not exceed 5% of the parent's gross income.

(j)(1) Extraordinary medical expenses are uninsured or unreimbursed medical expenses in excess of \$250 per year, per child subject to the support order. These expenses include co-payments, deductibles, and contributions associated with public and private health insurance coverage, and costs that are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, or the diagnosis or treatment of a health condition.

(2) Extraordinary medical expenses shall be divided between the parents in proportion to their respective adjusted gross incomes.

(3) If extraordinary medical expenses are recurring and the judicial officer can reasonably determine future expenses when the support order is established or modified, the judicial officer shall add each parent's proportionate share of the expenses to the parent's share of the basic child support obligation. The parents shall pay other extraordinary medical expenses in proportion to their adjusted gross incomes when these expenses are incurred. If either parent advances payment for these expenses to a provider of services, the other parent shall reimburse that parent for the other parent's proportionate share of the expense within 30 days of receiving written proof of the expense and payment.

(k) Reasonable child care expenses incurred for a child subject to the support order due to the employment or education of either parent shall be divided between the parents in proportion to their adjusted gross incomes and added to their respective shares of the basic child support obligation. Child care expenses shall be determined by actual family experience, unless the judicial officer determines that the actual family experience is not in the best interest of the child. If there is no actual family experience, or if the actual family experience is not in the best interest of the child, the judicial officer shall determine a reasonable child care expense based on the cost of child care from a licensed source. If the primary residential parent chooses child care with an actual cost that is less than the level required to provide child care from a licensed source, the judicial officer shall use the actual child care expense to calculate the child support obligation.

(l) If a child subject to the support order receives SSDI derivative benefits from the parent with a legal duty to pay support, the following adjustment to the child support obligation shall be made:

(1) After the child support obligation is calculated pursuant to subsections (f) through (k) of this section, the amount of the SSDI derivative benefit paid to the child shall be subtracted from the child support obligation. If the SSDI derivative benefit is less than the child support obligation, the order shall be set at the difference between the child support obligation and the SSDI derivative benefit. If the SSDI derivative benefit is greater than the child support obligation, the order shall be set at zero.

(2) If the judicial officer finds that SSDI derivative benefits were paid to a child subject to the support order prior to the filing of the petition to establish or motion to modify child support, these benefits shall be credited toward any retroactive child support or accumulated arrears owed pursuant to the support order.

(m) As the last calculation in the determination of child support, the judicial officer shall calculate a low-income adjustment to ensure that the parent with a legal duty to pay support is able to satisfy personal subsistence needs after the payment of child support. The judicial officer shall apply this low-income adjustment after additions to and deductions from the parent's share of the basic child support obligation have been made pursuant to subsections (i) through (1) of this section. The low-income adjustment shall be calculated as follows:

(1) Calculate a child support obligation for the parent with a legal duty to pay support according to subsections (f) and (i) through (1) of this section.

(2) Determine the parent's maximum ability to pay child support by subtracting the self-support reserve from the parent's adjusted gross income. If the remainder is negative or less than \$600 per year, apply subsection (g) of this section to determine the parent's child support obligation.

(3) If the parent's maximum ability to pay child support calculated under paragraph (2) of this subsection is greater than or equal to \$600 per year, compare the parent's maximum ability to pay child support to the child support obligation calculated in paragraph (1) of this subsection. The parent's child support obligation shall be the lesser of these 2 amounts.

(n) The child support obligation, including additions for health insurance premiums, extraordinary medical expenses, and child care expenses, shall not exceed 35% of the adjusted gross income of the parent with a legal duty to pay support.

(o)(1) If the parties present a consent order, an agreement that is to become an order, or a written agreement that is to be merged in an order, the judicial officer shall examine the child support provisions of the agreement, and compare the child support provisions to the guideline. If the amount of child support agreed upon is different from the amount of child support that would be ordered presumptively upon application of the guideline, the judicial officer shall determine if the agreed-upon level of child support is fair and just. If the parties are represented by counsel, the judicial officer shall inquire whether the attorneys informed the clients of the guideline. If the clients have not been



informed of the guideline, the judicial officer shall advise the attorneys to do so. If a party is not represented by an attorney, the judicial officer shall ensure that the party is aware of the child support amount that the court would order presumptively pursuant to the guideline.

(2) The propriety of a departure from the guideline based on the consent of the parties shall be justified in writing with a statement of the factors that form the basis for the judicial officer's finding that the departure is fair and just. A transcript filed in the jacket shall suffice as a writing.

(p) Application of the guideline shall be presumptive. The guideline shall be applied unless its application would be unjust or inappropriate in the circumstances of the particular case. The propriety of any departure from the guideline under this subsection shall be justified in writing with a statement of the factors that form the basis for the judicial officer's finding that the guideline amount is unjust or inappropriate. A transcript filed in the jacket shall suffice as a writing. The factors that may be considered to overcome the presumption are:

(1) The needs of the child are exceptional and require more than average expenditures;

(2) The gross income of the parent with a legal duty to pay support is substantially less than that of the parent to whom support is owed;

(3) A property settlement provides resources readily available for the support of the child in an amount at least equivalent to the guideline amount;

(4) Either parent supports a dependent other than a child subject to the support order, including a biological or adoptive child, a step-child, or an elderly relative, and application of the guideline would result in extraordinary hardship;

(5) The parent with a legal duty to pay support needs a temporary period of reduced child support payments to permit the repayment of a debt or rearrangement of the parent's financial obligations; a temporary reduction may be included in a support order if:

(A) The debt or obligation is for a necessary expenditure of reasonable cost in light of the parent's family responsibilities;

(B) The time of the reduction does not exceed 12 months; and

(C) The support order includes the amount that is to be paid at the end of the reduction period and the date that the higher payments are to commence;

(6) The parent to whom support is owed receives child support for a child living in this parent's home, other than the child subject to the support order, and the resulting gross income of the household to which support is owed causes the standard of living of that household to be greater than that of the household of the parent with a legal duty to pay support. For the purposes of this paragraph, the standard of living of a household shall be measured by dividing the gross income available to the household from all sources by the federal poverty guideline, as reported by the United States Department of Health and Human Services, for the number of adults contributing to the household, plus the number of children;

(7) A child subject to the support order has regular and substantial

income that can be used for the care of the child without impairment of the child's current or future education;

(8) The parent with a legal duty to pay support has special needs that increase the costs of the parent's subsistence;

(9) The parent with a legal duty to pay support pays for certain expensive necessities for the child, such as tuition;

(10) The parent with a legal duty to pay support is 18 years old or younger and a full-time student;

(11) The child is a respondent in a neglect proceeding and has been placed outside the home with a goal of reunification with the parent; or

(12) Any other exceptional circumstance that would yield a patently unfair result.

(q)(1) Where a child spends 35% or more of the time during the year with each parent, there shall be a presumption that the parents have shared physical custody of the child. The child support obligation shall be calculated according to the following procedure:

(A) Determine the adjusted basic child support obligation by calculating the basic child support obligation pursuant to subsection (f)(2) of this section and multiplying it by 1.5.

(B) Determine each parent's proportionate share of the adjusted basic child support obligation based on each parent's share of combined adjusted gross income.

(C) Determine the amount of child support to be retained by each parent by multiplying each parent's share of the adjusted basic child support obligation by the percentage of time the child spends with the relevant parent.

(D) Subtract the amount of child support to be retained by each parent from the relevant parent's share of the adjusted basic child support obligation to determine the amount of each parent's child support obligation.

(E) The parent owing the greater amount under subparagraph (D) of this paragraph shall be the parent with a legal duty to pay support, and shall pay the difference between the 2 amounts to the other parent.

(F) Additions to and deductions from the parents' respective shares of the adjusted basic child support obligation determined under subparagraph (D) of this paragraph, shall be made as specified in subsections (i) through (1) of this section.

(G) A child support obligation calculated based on shared physical custody shall not exceed the amount that the parent with a legal duty to pay support would pay if this parent's child support obligation were calculated based on the other parent's sole custody pursuant to subsection (f) of this section.

(2) Where the presumption of shared physical custody does not apply because the child does not spend 35% or more of the time during the year with each parent, the judicial officer shall presumptively calculate the child support obligation based on sole physical custody pursuant to subsection (f) of this section.

(3) If the presumption of shared physical custody applies pursuant to paragraph (1) of this subsection, either parent may rebut this presumption by



proving that the method of calculating the child support obligation based on shared physical custody would be unjust or inappropriate because of the parents' particular arrangements for the custody of the child. If a parent rebuts this presumption, the judicial officer shall calculate the child support obligation based on sole physical custody pursuant to subsection (f) of this section.

(4) If the presumption of shared physical custody does not apply pursuant to paragraph (1) of this subsection, either parent may rebut the presumption that the support obligation should be calculated based on sole physical custody pursuant to subsection (f) of this section by proving that use of that method would be unjust or inappropriate based on the parents' particular arrangements for the custody of the child and that a calculation based on shared physical custody would yield a fair and just result. If a parent rebuts the presumption that the child support obligation should be calculated based on sole physical custody under this paragraph, the judicial officer shall calculate the child support obligation based on shared physical custody pursuant to paragraph (1) of this subsection.

(5) Where a parent has challenged the applicability of either method for calculating the child support obligation under this subsection, the judicial officer shall issue written factual findings stating the reason for using either the shared custody or sole custody method of calculation.

(6) Worksheet (B) in Appendix III may be used to calculate the child support obligation under this subsection.

(r) A support order issued under this section or section 46-204, shall be subject to modification by application of the guideline subject to the following conditions or limitations:

(1) The parents in a child support proceeding shall exchange relevant information on finances or dependents every 3 years and shall be encouraged to update a support order voluntarily using the updated information and the guideline. Relevant information is any information that is used to compute child support pursuant to the guideline.

(2) Every 3 years, in cases being enforced under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), the IV-D agency shall notify both parents of the right to a review, and, if appropriate, a modification of the support order under the guideline. The IV-D agency shall conduct the review in all cases where there is an assignment of support rights pursuant to § 4-205.19, and at the request of either parent in all other cases. If the IV-D agency conducts a review, the IV-D agency shall inform both parents if a modification is warranted under the guideline, and shall petition for a modification of the support order when there is an assignment of support rights or if requested by a parent.

(3) If a support order does not provide for the payment of medical expenses for each child subject to the support order, at the request of a party or the IV-D agency, the court shall modify the support order to provide for the payment of such expenses in accordance with section 16-916.

(4)(A) There shall be a presumption that there has been a substantial and material change of circumstances that warrants a modification of a support order if application of the guideline to the current circumstances of the parents

results in an amount of child support that varies from the amount of the existing support order by 15% or more. The presumption is rebutted by:

(i) Proof of special circumstances, such as a circumstance that would justify a departure from the guideline; or

(ii) Proof of substantial reliance on the original support order issued prior to the adoption of or revision to the guideline, and that application of the guideline would yield a patently unjust result.

(B) If a change to the guideline results in a support order that differs from the current support order by 15% or more, the presumption stated in subparagraph (A) of this paragraph shall apply, and the current order may be modified without any additional showing of a change in circumstances.

(C) Nothing in this paragraph shall be construed to limit the ability of a parent to seek a modification of a support order upon a showing of a material and substantial change in the needs of the child or the ability of the parent with a legal duty to pay support to pay, regardless of whether this change results in a support order that differs by 15% or more from the current order.

(5) In cases being enforced under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2371; 42 U.S.C. § 651 et seq.), upon receipt of notice and documentation establishing that a parent is incarcerated in a specific facility (except where the parent is incarcerated for contempt for failure to pay child support pursuant to section 46-225.02), the IV-D agency shall review the circumstances of both parents and determine if a modification of the support order is appropriate under the guideline. If the IV-D agency determines that a parent's incarceration has resulted in a change in financial circumstances warranting a modification of the support order, the IV-D agency may request the court to suspend or modify the support order pursuant to this subsection. Upon receipt of such a request, the court shall modify the support order in accordance with the guideline. The court may modify the support order from the date on which the IV-D agency received notice under this paragraph of the parent's incarceration.

(6) The basic child support obligation, as adjusted by additions and deletions made pursuant to subsections (i) through (1) of this section, shall be used to compute the amount of child support the guideline would yield for modification and to apply the test for the presumption.

(7) If a support order is issued after September 27, 1987, and the amount of the support order differs from the guideline, by order of the court or by a merged agreement of the parties, the presumption shall not apply within one year of the issuance of the support order.

(8) If a motion to modify a support order pursuant to this section is accompanied by an affidavit that sets forth sufficient facts and guideline calculations, and is accompanied by proof of service upon the respondent, the judicial officer may enter an order modifying the support order in accordance with the guideline unless a party requests a hearing within 30 days of service of the motion for modification. No support order shall be modified without a hearing if a hearing is timely requested.

(9) Notwithstanding paragraphs (3) through (6) of this subsection, a party may submit a praecipe with a certification of waiver and supporting documen-



tation, as prescribed by the court, to modify the child support amount by agreement of the parties at any time. This agreement shall be reviewed by a judicial officer for issuance of a revised support order in the same manner as an original agreement of the parties is reviewed.

(10) The judicial officer shall justify any departure from the guideline in writing with a statement of the factors that form the basis for the finding that the guideline amount is unjust or inappropriate. A transcript filed in the jacket shall suffice as a writing.

(11) Notwithstanding paragraph (4)(B) of this subsection, if a new child is born to the parents, the guideline shall be applied to the entire family and one order shall be issued for all the children in the family. If possible, the 2 cases shall be consolidated if child support for the last child is petitioned as a separate case.

(12) Nothing in this subsection shall preclude a party from moving to modify a support order at any other time.

(s) A support order shall not be deemed invalid on the sole basis that the support order was issued pursuant to the Superior Court of the District of Columbia Child Support Guideline and prior to the effective date of the Child Support Guideline Amendment Emergency Act of 1989, effective December 21, 1989 (D.C. Act 8-127; 37 DCR 3).

(t) Upon the occurrence of a substantial and material change in circumstances sufficient to warrant the modification of a child support obligation pursuant to the guideline, the judicial officer may modify any provision of an agreement or settlement relating to child support, without regard to whether the agreement or settlement is entered as a consent order or is incorporated or merged in a court order.

(u) If an order or agreement providing for child support does not set forth a date on which the child support commences, the child support shall be deemed to commence on the date the order was entered or the date the agreement was executed.

(v)(1) When a case is brought to establish child support, the judicial officer may award retroactive child support for a period not to exceed the 24 months preceding the filing of the petition or request for child support, unless the parent to whom support is owed proves that the parent with a legal duty to pay support has acted in bad faith or there are other extraordinary circumstances warranting an award of retroactive child support beyond the 24-month period. Upon this showing, the judicial officer may award retroactive child support for a period that exceeds the 24 months prior to the filing of the petition or request for child support. The judicial officer shall issue written factual findings stating the reason for awarding retroactive child support beyond the 24 month period.

(2) Retroactive child support shall be determined by calculating the guideline using the parents' incomes during the retroactive period and by considering the current ability to pay of the parent with a legal duty to pay support according to subsections (g) and (m) of this section.

(3) If the parent with a legal duty to pay support made voluntary payments or contributions to the child's expenses during the retroactive

period, and proves these payments or contributions, the judicial officer shall credit the payments or contributions against an award of retroactive child support.

(w) The Schedule of Basic Child Support Obligations contained in Appendix I shall be used to determine child support under the guideline.

(x) The worksheets contained in Appendices II and III may be used to calculate child support obligations under the guideline. Refer to Worksheet B in Appendix III to calculate child support in cases involving shared physical custody pursuant to subsection (q) of this section. Refer to Worksheet A in Appendix II to calculate child support in all other cases.

(y) The Mayor shall recommend to the Council every 4 years whether the dollar values in subsections (g)(3), (h), (j)(1), (m)(2), and (m)(3) of this section should adjusted for inflation.

(July 25, 1990, D.C. Law 8-150, § 2(b), 37 DCR 3720; Sept. 26, 1990, D.C. Law 8-165, § 3, 37 DCR 4827; Mar. 16, 1995, D.C. Law 10-217, § 3, 41 DCR 8040; Apr. 9, 1997, D.C. Law 11-255, § 18(e), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 10(g), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-241, § 12, 46 DCR 905; Apr. 3, 2001, D.C. Law 13-269, § 106(h), 48 DCR 1270; Jan. 8, 2002, Pub. L. 107-114, § 2(d)(1), 115 Stat. 2106; Oct. 19, 2002, D.C. Law 14-207, § 2(k), 49 DCR 7827; Mar. 30, 2004, D.C. Law 15-130, § 202(c), 51 DCR 1615; May 24, 2005, D.C. Law 15-357, § 104, 52 DCR 1999; May 12, 2006, D.C. Law 16-100, § 2(h), 53 DCR 1886; June 22, 2006, D.C. Law 16-138, § 2(a), 53 DCR 3650; Mar. 20, 2008, D.C. Law 17-128, § 2(d), 55 DCR 1525; Dec. 10, 2009, D.C. Law 18-88, § 403, 56 DCR 7413.)

**Prior Codifications.** — 1981 Ed., § 16-916.1.

**Effect of amendments.** — D.C. Law 13-269, in subsec. (i), substituted “if payment of such expenses has not been addressed in the support order or in an agreement between the parties” for “absent an agreement between the parties” at the end of the first sentence and rewrote (o)(2), which formerly read:

“(2) Every 3 years, in cases being enforced under part D of title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.) (“IV-D program”), the Department of Human Services Office of Paternity and Child Support Enforcement and the Child Support Section of the Civil Division of the Office of the Corporation Counsel shall notify both the noncustodial and the custodial parent of the right to seek a modification of their child support order under the guidelines. The Department of Human Services Office of Paternity and Child Support Enforcement and the Child Support Section of the Civil Division of the Office of the Corporation Counsel shall establish a procedure for informing the noncustodial and custodial parent if a modification is warranted under the guideline.”

Pub. L. 107-114, in subsec. (o)(6), substituted “Family Court of the Superior Court” for “Family Division”.

D.C. Law 14-207, in subsec. (c), rewrote par. (17), made nonsubstantive changes to pars. (23) and (24), and added par. (25); added subsec. (c-1); in subsec. (j), added par. (3); in subsec. (n), inserted “In such shared custody situations, the judicial officer shall have the authority to order either parent to pay a portion of the following expenses for the child: extracurricular activities and lessons, visitation, transportation, private school tuition, school fees, day care, camp, unreimbursed or uninsured health care expenses, and other such expenses. The payments may be in addition to any award of child support.”; and added subsecs. (s) and (t). Par. (17) of subsec. (c) had read as follows: “(17) Spousal support received from a person who is not a party to the child support order;”

D.C. Law 15-130 added subsec. (h-1) and par. (2A) of subsec. (o).

D.C. Law 15-357 added par. (3A).

D.C. Law 16-100, in par. (o)(3A), substituted “specific facility (except where the parent is incarcerated for contempt for failure to pay child support pursuant to section 46-225.02),” for “specific facility.”

D.C. Law 16-138 rewrote the section.

**Temporary Amendment of Section.** — For temporary (225 day) addition of § 16-916.1 1981 Ed., see § 2(b) of the Child Support



Guideline Amendment Temporary Act of 1989 (D.C. Law 8-90, March 15, 1990, law notification 37 DCR 2073).

For temporary (225 day) amendment of section, see § 3 of the Child Support Enforcement Temporary Amendment Act of 1994 (D.C. Law 10-210, March 14, 1995, law notification 42 DCR 1526).

For temporary (225 day) amendment of section, see § 5(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 12 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 105(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

For temporary (225 day) amendment of section, see § 2(h) of the Income Withholding Transfer and Revision Temporary Amendment Act of 2005 (D.C. Law 16-42, December 10, 2005, law notification 52 DCR 11038).

**Emergency legislation.** — For temporary addition of § 16-916.1 1981 Ed. and 16-916.2 1981 Ed., see § 2 and 3 of the Child Support Guideline Amendment Emergency Act of 1989 (D.C. Act 8-127, December 21, 1989, 37 DCR 3).

For temporary amendment of section, see § 3 of the Child Support Enforcement Emergency Amendment Act of 1994 (D.C. Act 10-322, August 4, 1994, 41 DCR 5373), § 3 of the Child Support Enforcement Congressional Adjournment Emergency Amendment Act of 1994 (D.C. Act 10-328, October 21, 1994, 41 DCR 7158), and § 3 of the Child Support Enforcement Congressional Adjournment Emergency

Amendment Act of 1995 (D.C. Act 11-4, January 19, 1995, 42 DCR 543).

For temporary amendment of section, see § 5(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(j) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(j) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(j) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 12 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 12 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 12 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 12 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(j) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(j) of the Child Support and Welfare Reform Compliance Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(h) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 202(c) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 2(h) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 2(h) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

For temporary (90 day) amendment of section, see § 2 of Self-Support Reserve Revision Emergency Act of 2009 (D.C. Act 18-131, July 6, 2009, 56 DCR 5690).

For temporary (90 day) amendment of section, see § 403 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 403 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

**Legislative history of Law 8-150.** — Law 8-150, the “Child Support Guideline Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by

the Mayor on May 30, 1990, it was assigned Act No. 8-208 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-165.** — Law 8-165, the “District of Columbia Statutory Savings Provision Act of 1990,” was introduced in Council and assigned Bill No. 8-552, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-230 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-217.** — Law 10-217, the “Child Support Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-740. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-354, and transmitted to both Houses of Congress for its review. D.C. Law 10-217 became effective on March 16, 1995.

**Legislative history of Law 11-255.** — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-909.01.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 12-241.** — For legislative history of D.C. Law 12-241, see Historical and Statutory Notes following § 16-901.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

**Legislative history of Law 15-130.** — For Law 15-130, see notes following § 16-901.

**Legislative history of Law 15-357.** — Law 15-357, the “Omnibus Public Safety Ex-offender Self-sufficiency Reform Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-744 and transmitted to both Houses of Congress for its review. D.C. Law 15-357 became effective on May 24, 2005.

**Legislative history of Law 16-100.** — For D.C. Law 16-100, see notes following § 16-571.01.



**Legislative history of Law 16-138.** — Law 16-138, the “Child Support Guideline Revision Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-205 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 26, 2006, it was assigned Act No. 16-367 and transmitted to both Houses of Congress for its review. D.C. Law 16-138 became effective on June 22, 2006.

**Legislative history of Law 17-128.** — For Law 17-128, see notes following § 16-901.

**Legislative history of Law 18-88.** — For Law 18-88, see notes following § 16-801.

**Delegation of Authority.** — Delegation of Authority under D.C. Official Code § 16-916.01(g), to Update the Self-Support Reserve Component of the Child Support Guideline, see Mayor’s Order 2011-53, March 18, 2011 (58 DCR 2522).

**Editor’s notes.** — Section 28(b)(2) of D.C. Law 15-354 provided that the section designation of § 16-916.1 of the District of Columbia Official Code is redesignated as § 16-916.01.

**Applicability:** Section 4 of D.C. Law 16-138 provided: “This act shall apply as of April 1, 2007.”

## CASE NOTES

### ANALYSIS

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### Ability to pay.

Trial court did not abuse its discretion by failing to deduct former husband’s alleged ordinary and necessary business expenses from his gross earnings as a sea captain, when the court calculated former husband’s gross income for purposes of current monthly child support payments by annualizing bank deposits from the first five months of the prior year when former husband worked as a sea captain, as former husband provided no evidence of his expenses for the year in question, though former husband provided evidence of business expenses in prior years his profession and salary changed on a regular basis, former husband was highly educated with a Bachelor of Arts degree and a Masters Degree, and trial court properly relied on former husband’s earning potential. *Lasche V. Levin*, 977 A.2d 361 (2009).

Voluntary reduction of income or self-imposed curtailment of earning capacity ordinarily does not affect spouse’s obligation to pay child support. D.C. Code 1981, § 16-916.1. *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994).

Husband incarcerated for shooting wife could not be ordered in divorce action to pay monthly child support of \$50 as debt or judgment deferred until his release from prison, as rule preventing parent from evading child support responsibility by voluntarily reducing income did not apply; although husband shot wife voluntarily, there was no suggestion that he did so with purpose to be arrested, spend next seven years and more in prison, and thereby voluntarily reduce his income. D.C. Code 1981, §§ 16-916.1, 16-916.1(e)(2), 30-504(b). *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994).

Rule that prevents parent from evading child support responsibility by voluntarily reducing income presupposes ability to have maintained that income. D.C. Code 1981, § 16-916.1. *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994).

In considering motion to modify child support order, court may not give any effect to determination that noncustodial parent needs temporary period of reduced child support to pay debts unless court first has found the changed circumstances necessary for modification of child support order. D.C. Code 1981, §§ 16-916.1(l)(5), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Father’s voluntary accumulation of obligations to various creditors does not entitle him to reduction in his child support obligation, since his claimed inability to pay is self-inflicted. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

Material change in father’s ability to pay child support warrants increase, regardless of any increase in children’s need for increased child support. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

Although father’s written motion to suspend child support payments because of his discharge from job may have been deficient in that

motion did not request opportunity to present evidence, motions judge could not properly deny motion to suspend without first determining that father remained financially able to make payments; record did not establish whether father's unemployment was voluntary or involuntary or extent of his efforts to find job, much less likelihood that he would be able to find new employment or extent of any financial resources available to him, and father's counsel represented that father was prepared for financial review. D.C. Code 1981, § 16-916.1(a). *Garcia v. Andrade*, 622 A.2d 64, 1993 D.C. App. LEXIS 72 (1993).

In ruling on motion to modify child support payments, motions judge must determine whether, in fact, there is financial ability to pay. D.C. Code 1981, § 16-916.1(a). *Garcia v. Andrade*, 622 A.2d 64, 1993 D.C. App. LEXIS 72 (1993).

Requiring former wife to pay \$150 per month in child support for 14-year-old child who resided with former husband was not abuse of discretion in divorce action in which trial court found that although former wife was unemployed, she had investment accounts, property in Italy and bank account with balance of over \$40,000, in which there was evidence that former wife was able to give adult daughter between \$400 and \$500 per month to help with expenses, and in which trial court found that former wife had made money in past and had marketable skills. D.C. Code 1981, §§ 16-916.1, 16-916.1(e)(2). *Negretti v. Negretti*, 621 A.2d 388, 1993 D.C. App. LEXIS 58 (1993).

Father's loss of job after many years of employment was an exceptional circumstance which could be considered to overcome presumptive award under child support guideline. D.C. Code 1981, § 16-916.1(l). *Guyton v. Guyton*, 602 A.2d 1143, 1992 D.C. App. LEXIS 42 (1992).

Financial ability of parent to pay support obligation is a factor for consideration in modifying support obligation since trial court has authority to depart from child support guideline where its application would be unjust or inappropriate. D.C. Code 1981, § 16-916.1(l). *Guyton v. Guyton*, 602 A.2d 1143, 1992 D.C. App. LEXIS 42 (1992).

Voluntary changes in ability to pay are not material, because a voluntary change is not a change in the individual's actual ability to pay. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

The good faith nature of a change in circumstances is a factor that the court considers, employing three factors in determining good faith: (1) The original circumstances of the change; (2) the obligor's efforts to continue making payments; and (3) the duration of the change. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

Whether the original change in circumstances is voluntary or involuntary, in the absence of permanent disability, the obligor must, after a reasonable period of time, make good faith efforts to produce sufficient income to enable the obligor to make the payments. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

#### **Children-out-of-wedlock.**

Curative legislation setting forth child support guidelines could be applied retroactively to validate order requiring putative father of child born out-of-wedlock to pay child support, which had been issued pursuant to superior court guidelines that were subsequently invalidated; legislation did not differentiate between support orders that had not been appealed and support orders that were pending on appeal at time of decision invalidating court guidelines. D.C. Code 1981, §§ 16-916, 16-916.1(r). *A.S. v. District of Columbia*, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

If father of child born out of wedlock has some demonstrable reason for being excused from his parental duty of support, burden falls on him to persuade court to excuse him, and if he does not carry that burden of persuasion then court should generally order child support payments retroactive to child's birth. D.C. Code 1981, §§ 16-916.1, 16-916.1(b)(1), (l), 16-916.2. *J.A.W. v. D.M.E.*, 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Retroactive child support should normally be awarded for child born out of wedlock, and there is rebuttable presumption arising from statutory obligation of support in favor of awarding retroactive child support for child born out of wedlock, thus, absent showing of reasons why father should be relieved of his statutory obligation, the court should award child support retroactive to dates of child's birth. D.C. Code 1981, § 16-916.1(l). *J.A.W. v. D.M.E.*, 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

#### **Construction and application with other law.**

Even if mother domiciled in Maryland with children had sought child support from father under Uniform Reciprocal Enforcement of Support Act (URESA), application of Maryland child support guideline would not have been statutorily precluded; case law stood for proposition that application of law of state where children live was, at least, permissible alternative which courts were bound to consider in URESA case. D.C. Code 1981, § 30-304. *Mims v. Mims*, 635 A.2d 320, 1993 D.C. App. LEXIS 305 (1993), remanded by 686 A.2d 1059, 1997 D.C. App. LEXIS 6 (D.C. 1997).

Fact that Texas court's order required certain monthly payments when registered in district



under Uniform Reciprocal Enforcement of Support Act does not compel trial court to retain it at that level for all time. D.C. Code 1981, § 30-326. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

#### Departure from guidelines.

Although a written explanation is statutorily required whenever a court deviates from child support guidelines, the lack of written findings may not require reversal in every case; it may be that a transcript of the proceeding could suffice, provided that adequate oral findings are included in the transcript, or a remand with directions to supplement the record may be appropriate. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Although parents have unqualified obligation to contribute to support of their minor children, and calculation of support under Child Support Guideline employs some objective standards, departures from Guideline are authorized if its application would be unjust or inappropriate under the circumstances shown. D.C. Code 1981, § 16-916.1. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Child support guideline creates presumption that amount arrived at through prescribed calculations is appropriate support obligation for noncustodial parent, but judicial officer entering support order may depart from guideline in exceptional circumstances if reasons are explained in writing, except that variation of three percent need not be justified by specific findings although judicial officer should consider list of factors. D.C. Code 1981, § 16-916.1(l). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

For party seeking to rebut presumption of substantial or material change in circumstances warranting modification of child support, arising when application of child support guideline to current circumstances results in amount of child support varying from current amount by 15% or more, special circumstances taking case outside the guideline include statutory factors which would justify departure from guideline when child support order is initially entered. D.C. Code 1981, § 16-916.1(l), (o)(2, 3). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Though statutory factors that would justify departure from child support guidelines may rebut presumption that there has been substantial or material change in circumstances that would warrant modification of child support order, based on variance between amount of order and amount resulting from application of guidelines to current conditions, no such factor can by itself provide the showing of changed circumstances necessary for modification of child support. D.C. Code 1981, §§ 16-916.1(l)(1, 5), (o)(3), (o)(3)(A), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

*son v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Factor that would take case outside child support guidelines could not by itself amount to substantial or material change of circumstances when the findings on which the initial order was based took that very same factor into account. D.C. Code 1981, § 16-916.1(l), (o)(3)(A). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Where findings on which initial child support order was based included most of father's indebtedness, that indebtedness could not be used to establish a substantial or material change of circumstances that would take the case outside child support guideline so as to allow period of reduced support for payment of indebtedness. D.C. Code 1981, §§ 16-916.1(l), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Although trial court must justify any departure from guideline amount of child support in award against noncustodial parent whose income is within ranges to which guidelines presumptively apply, court is not so obliged to adhere to guideline percentages or justify deviation when noncustodial parent's income exceeds highest income listed in guidelines; child support guidelines allow court greater discretion in fixing amount of support when parent is relatively wealthy. D.C. Code 1981, § 16-916.1(f). *Galbis v. Nadal*, 626 A.2d 26, 1993 D.C. App. LEXIS 140 (1993).

Evidence did not show exceptional circumstances that would have warranted departure from child support guidelines in proceedings against putative father to obtain support for child born out-of-wedlock. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 16-916.1(l). *A.S. v. District of Columbia*, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

As a practical matter, the guideline percentage is applied after certain fundamental facts have been established by the custodial parent—most notably the gross incomes of the parents, the ages and number of children to be supported, child care costs and medical insurance costs; thereafter, the burden of going forward shifts to the party seeking a departure from the guidelines presumption. *District of Columbia v. Jackson*, 125 WLR 229 (Super. Ct. 1997).

Where a child support amount based on the noncustodial parent's income, under the support guidelines, exceeded what the custodial parent indicated as necessary because the cost of living was lower where the custodial parent lived, the court held the custodial parent would not be penalized for where they lived by lowering the amount of support. *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990).

#### Determination of income.

In computing the income ex-husband could fairly be expected to earn going forward in his

law practice, in child support modification case, the trial judge failed to take into account the expenses to ex-husband of operating his own firm and the amount by which these expenses necessarily would reduce ex-husband's net earnings, and, because appellate court could not determine from the trial judge's written opinion what weight, if any, she gave to this evidence or the manner in which she accounted for the inevitable costs of running a law practice, case would be remanded. *Wilson v. Craig*, 987 A.2d 1160, 2010 D.C. App. LEXIS 27 (2010).

Distributions from the principals of inter vivos trusts established by former husband's parents to former husband upon the trusts' termination due to parents' respective deaths were not per se includable in gross income, for purposes of calculating former husband's retroactive child support payment obligations, as under the child support guidelines only regular income from an interest in an estate directly or through a trust was to be included in gross income, and regular income could not reasonably include non-periodic disbursements from a trust corpus. *Lasche V. Levin*, 977 A.2d 361 (2009).

#### Evidence.

Evidence was insufficient to support reduction of child support payment to less than minimum required by guidelines; although father testified that his wife was ill and that he incurred expenses in relation to her illness, he presented no documentation to this effect and he did not state total amount of those expenses or how they impaired his ability to meet child support obligation. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Trial court did not abuse its discretion in excluding evidence of father's business expenses as discovery sanction, and fact that, if such expenses had not been excluded, statutory test for the presumption in favor of modification of his child support obligation would probably have been met did not warrant reversal; given father's repeated refusals to comply with court orders, he could not contend that his actions were anything but willful. Domestic Relations Rule 37(b); D.C. Code 1981, § 16-916.1(o)(3). *Galbis v. Nadal*, 734 A.2d 1094, 1999 D.C. App. LEXIS 158 (1999).

Nature of burden of proof on mother seeking child support retroactive to date of child's birth for child born out of wedlock is confined to offering proper proof of reasonable expenses. D.C. Code 1981, § 16-916.1(l). *W.M. v. D.S.C.*, 591 A.2d 837, 1991 D.C. App. LEXIS 114 (1991).

#### Finality of judgment.

Child support order which is subject to modification in original state is not final judgment to which full faith and credit clause applies.

U.S. Const. Art. 4, § 1. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

#### Guidelines generally.

Magistrate judge did not abuse her discretion in awarding biological mother pendente lite child support in the amount of \$4,000/month pending resolution of mother's action seeking permanent child support and child custody; the judge considered both the exiting guidelines and proposed revisions, biological father's annual income of \$2.1 million/year and mother's lack of any income was well beyond cap in either of the guidelines, father was paying \$4,000/month in child support for three other children from a previous marriage, father would likely have paid close to \$3,100/month if the case had been filed in Virginia where the guidelines did not cap out at higher income levels, and case law provided that when a noncustodial parent's income exceeded the highest amount to which the guidelines applied a court could award a level of support commensurate with the income and lifestyle of the noncustodial parent. *Upson v. Wallace*, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

Portion of the settlement amount that wife received for settling her defamation claims against her former employer properly was included in wife's gross income for the purpose of computing the parties' child support obligations, given that child support guidelines defined "gross income" to be included in the award of child support as income from any source without limitation. *Slaughter v. Slaughter*, 867 A.2d 976, 2005 D.C. App. LEXIS 18 (2005).

Trial court determining amount of child support to award against noncustodial parent whose income exceeded highest amount to which child support guideline percentages presumptively applied was not required to base award on child's documented expenses, but rather, could award level of support commensurate with income and life-style of noncustodial parent and could also apply guideline percentages to determine, as a matter of discretion, what level of support was appropriate. D.C. Code 1981, § 16-916.1(b)(3). *Galbis v. Nadal*, 626 A.2d 26, 1993 D.C. App. LEXIS 140 (1993).

Trial court erred in increasing father's support obligation by application of child support guideline to gross income court determined father would earn were he not unemployed, where termination of father's employment and his inability to locate new employment was involuntary. D.C. Code 1981, § 16-916.1(l). *Guyton v. Guyton*, 602 A.2d 1143, 1992 D.C. App. LEXIS 42 (1992).



Emergency child support guidelines were applicable to paternity action in which judge signed final order the day after guidelines became law, even though guidelines were in effect for less than three months. D.C. Code 1981, §§ 16-916, 16-916.1, 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Trial judge's error in concluding that emergency child support guidelines did not apply in paternity action was harmless, where amount of support actually awarded was consistent with guidelines. D.C. Code 1981, §§ 16-916, 16-916.1, 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Trial court did not abuse its discretion in including adjudicated father's income tax refund in calculating his annual income for purposes of child support, where evidence indicated that refund arose as a result of tax benefits of rental property owned by father and was properly viewed as disposable income. D.C. Code 1981, § 16-916.1(r). J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Even though the Guidelines provides that "application of the Guidelines shall be presumptive," and that "the guideline shall be applied presumptively," the guideline percentages are applicable only to certain income levels and not to others; at income levels for which no guideline percentages were prescribed by the Committee, the needs of the child and the ability of the parents to pay must be proved as would be necessary in a traditional child support proceeding brought prior to the enactment of the Guideline. District of Columbia v. Jackson, 125 WLR 229 (Super. Ct. 1997).

In cases where a noncustodial parent is not regularly employed but is able to work, it is customary to enter a nominal support order pursuant to subsection (e)(3), which is typically entered with the consent of the noncustodial parent. J.W. v. J.A., 121 WLR 449 (Super. Ct. 1993).

### **In general.**

Litigation conduct is not a factor pertinent to a determination of the amount of child support to be awarded. Wilkins v. Bell, 917 A.2d 1074, 2007 D.C. App. LEXIS 83 (2007).

Subsection (e)(2) is advisory. District of Columbia v. Jackson, 125 WLR 229 (Super. Ct. 1997).

Applying the clean hands doctrine to the misconduct of a custodial parent in such a way as to prevent an increase in the amount of child support which would otherwise be justified would arguably be against public policy; however, applying the doctrine to the misconduct of a noncustodial parent so as to bar a reduction request would not transgress that public policy and in fact may be consistent with such a policy. J.W. v. J.A., 121 WLR 449 (Super. Ct. 1993).

Reasonable expenses for a child are not to be limited to bare necessities of life but may extend to articles and activities consistent with the noncustodial parent's station in life. Walker v. Simmons, 118 WLR 2593 (Super. Ct. 1990).

Res judicata barred petitioner from seeking requested retroactive support where petitioner had already had one chance to request the relief in an earlier claim and failed to do so. District of Columbia ex rel. Harvey v. Washington, 121 WLR 1353 (Super. Ct. 1993).

### **Military housing allowance.**

Father's military housing allowance was "income" for the purpose of calculating his child support obligations, pursuant to statute defining a parent's gross income to include salary or wages, veteran's benefits, a contract resulting in regular income, or a significant perquisite or in-kind compensation representing a regular source of income or reducing living expenses. Brown v. Hines-Williams, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

Father's military housing allowance was not received by or on behalf of a child, and thus could not be excluded from calculation of father's income for purposes of calculating child support obligation, pursuant to statute intended to exclude income of parents' other children for purposes of calculating child support; although a portion of father's housing allowance depended on presence of father's other children, allowance was paid to father, not to other children. Brown v. Hines-Williams, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

### **Modification.**

Settlement agreement executed in Georgia with respect to child support was merged into divorce decree and thus, was an order subject to modification governed by child support guidelines and modification statute. Mazza v. Hollis, 947 A.2d 1177, 2008 D.C. App. LEXIS 235 (2008).

Doctrine of res judicata did not apply to bar petition for child support against father following voluntary vacation of prior child support order; no issues were litigated in prior order, vacation of prior order did not eliminate father's ongoing obligation to support child until she reached age of majority, and second petition raised issues that were distinct from prior order. Sollars v. Cully, 904 A.2d 373, 2006 D.C. App. LEXIS 445 (2006).

Since there was only 13% variation, as opposed to the 15% required by statute, between original child support figure and what that figure would be if it was based on current circumstances, statutory presumption of substantial change of circumstances warranting modification of child support order did not arise. D.C. Code 1981, § 16-916.1(o)(3). Galbis

v. Nadal, 734 A.2d 1094, 1999 D.C. App. LEXIS 158 (1999).

If court order requiring payment of child support comes into existence subsequent to execution of unmerged, unincorporated separation or property agreement, principles embodied in child support guideline apply to modification of support, rather than requirement of substantial and material unforeseen change in circumstances. D.C. Code 1981, § 16-916.1(a). *Clark v. Clark*, 638 A.2d 667, 1994 D.C. App. LEXIS 30 (1994).

Though child support was originally set pursuant to an unmerged, unincorporated agreement of the parties, temporary support order which subsequently was entered because of failure of husband to make payments pursuant to the agreement could serve as basis for modification of child support pursuant to statute. D.C. Code 1981, § 16-916.1(a). *Clark v. Clark*, 638 A.2d 667, 1994 D.C. App. LEXIS 30 (1994).

Existing child support order is prerequisite to trial court's modification of amount of child support, and thus provisions of statutes concerning modification and child support guidelines apply only if there is existing child support order. D.C. Code 1981, §§ 16-916.1, 30-504(a). *Clark v. Clark*, 638 A.2d 667, 1994 D.C. App. LEXIS 30 (1994).

Order increasing father's child support obligation may be based on material change in his ability to pay or needs of children, though father assumed obligations and made expenditures in reliance on amounts established from earlier child support order of Texas court; father's agreement, for consideration, to forego his right to appeal from litigated order did not convert it into comprehensive separation agreement to which deferential mode of analysis should apply. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

Presumption in child support guidelines in favor of modification of child support order did not apply, where noncustodial parent's income exceeded \$75,000 per year. *Prisco v. Stroup*, 132 WLR 2513 (Super. Ct. 2004).

Considering the father's extraordinary debt on student loans and for back tax liability to the Internal Revenue Service, under the authority of paragraph (1)(5), court granted a temporary period of reduced child support to permit the repayment of these debts and rearrangement of his financial obligations. *R.M.N. v. M.R.N.*, 119 WLR 1985 (Super. Ct. 1991).

#### Notice.

Notification of father's attorney by social worker, less than five business days before dispositional hearing, of availability of predisposition report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was

insufficient to meet due notice requirement of child support statute; while five-day prefling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter which required different factual and legal focus. D.C. Code 1981, §§ 16-916.1, 16-2319(b), 16-2325. *In re X.B.*, 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of predispositional report, less than five business days before dispositional hearing, was inadequate to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. *In re X.B.*, 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

#### Purpose.

Congressional intent in providing Veterans Administration benefits was to provide for veterans and their families, and therefore child support guideline which included Veterans Administration disability benefits in calculation of support obligation did not violate federal statutes which gave Secretary of Veterans Administration authority to apportion benefits in event that veteran's children were not in veteran's custody and to decide questions of law and fact affecting provision of benefits to veterans and their dependents, such that child support guideline was not preempted under supremacy clause. U.S. Const. Art. 6, cl. 2; 38 U.S.C. §§ 511(a), 5307(a)(2); D.C. Code 1981, § 16-916.1. *Loving v. Sterling*, 680 A.2d 1030, 1996 D.C. App. LEXIS 138 (1996).

Child support is not intended to punish father, but to ensure decent standard of living for child. *Mims v. Mims*, 635 A.2d 320, 1993 D.C. App. LEXIS 305 (1993), remanded by 686 A.2d 1059, 1997 D.C. App. LEXIS 6 (D.C. 1997).

Child support payments are for benefit of children, not mother, and children's interests are paramount. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

The philosophy behind child support is that the child should be able to enjoy the standard and quality of life the child would have experienced in an intact family with the noncustodial parent present. *Walker v. Simmons*, 118 WLR 2593 (Super. Ct. 1990).

#### Retroactive application.

Order that mother pay child support retroactive to date of motion for temporary child support, rather than from date children were re-



moved from mother's home, was not abuse of discretion; date of motion coincided with date parties came into compliance with prior order for therapeutic reconciliation process that would re-introduce children to mother, and award was based on consideration of parties' incomes, parties' dispute about father's income, difficulty in calculating mother's income, children's extraordinary medical expenses, costs for therapeutic reintroduction of children to mother, and costs of litigating support determination. *Beraki v. Zerabruke*, 4 A.3d 441, 2010 D.C. App. LEXIS 545 (2010).

Court of Appeals would not address question of whether amendment to child support statute generally establishing a 24-month limitation on the award of retroactive child support retroactively applied to former wife's counterclaim, in former husband's action for access to the parties' minor daughter, seeking retroactive support covering a 10-year period, where former husband did not assert that the amendment applied in the trial court, and did not in a direct and concrete way assert on appeal that the amendment applied. *Lasche V. Levin*, 977 A.2d 361 (2009).

#### Review.

Appellate court reviews a trial court's application of the child support guidelines for abuse of discretion. *Slaughter v. Slaughter*, 867 A.2d 976, 2005 D.C. App. LEXIS 18 (2005).

Failing to allow testimony regarding father's expenses in relation to wife's illness and how such expenses impaired father's ability to meet child support obligation was clearly erroneous. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Commissioner's refusal to include father's overtime wages in calculation of his gross annual income, for purpose of determining child support obligation, was plain error. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Reviewing court action in sustaining commissioner's ruling that father's overtime wages were not to be included in calculating gross annual income, for purpose of determining child support obligation, on ground that amount of overtime was too speculative was legally erroneous, where evidence indicated that father's total income in previous year was

more than \$20,000 above his base salary. *Hight v. Tucker*, 757 A.2d 756, 2000 D.C. App. LEXIS 195 (2000).

Any errors trial court made in calculating support amount of parent whose income exceeded highest amount to which child support guidelines presumptively applied were not of such magnitude as to require reversal or recalculation, where errors, if any, primarily favored noncustodial parent and recalculation would result in relatively minor changes to support order; appellate court would countenance minor imperfections in trial court's exercise of discretion in order to enjoy more fully the benefits of discretionary decisions as to support amount. D.C. Code 1981, § 16-916.1(d); General Family Rules App. I. *Galbis v. Nadal*, 626 A.2d 26, 1993 D.C. App. LEXIS 140 (1993).

An award of child support under the child support guideline will not be disturbed unless the trial court has abused its discretion in making the award. D.C. Code 1981, § 16-916.1. *Weiner v. Weiner*, 605 A.2d 18, 1992 D.C. App. LEXIS 74 (1992).

#### Validity.

Child support guidelines do not violate separation of powers, despite contention that they impermissibly curtail discretion of trial court to award support. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 16-916.1(l). *A.S. v. District of Columbia*, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

Legislation setting forth child support guidelines does not facially violate due process, despite restriction on ability of commissioners and trial judges to depart from computations of guidelines; rational basis exists for presumption that guidelines shall apply. D.C. Code 1981, § 16-916.1(l), (l)(8); U.S. Const.Amends. 5, 14. *A.S. v. District of Columbia*, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

Presumption that child support guidelines shall apply does not violate due process, despite contention that presumption requires judges to "plug in numbers from a computer," rather than exercise case-specific discretion, in setting amounts of child support; legislation gives trial courts authority to depart from guidelines in exceptional circumstances. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 16-916.1(l). *A.S. v. District of Columbia*, 593 A.2d 646, 1991 D.C. App. LEXIS 201 (1991).

## § 16-916.01a. Appendices to § 16-916.01.

[APPENDICES I. Schedule of Basic Child Support Obligations, II. Worksheet A: Sole Physical Custody, and III. Worksheet B: Shared Physical Custody to follow.]

APPENDIX I

Schedule of Basic Child Support Obligations				
COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
12,382	3261	4634	5410	6063
12,600	3310	4702	5488	6151
13,200	3444	4890	5705	6393
13,800	3577	5076	5919	6632
14,400	3695	5244	6113	6847
15,000	3810	5411	6306	7063
15,600	3926	5578	6500	7279
16,200	4042	5740	6693	7494
16,800	4157	5902	6886	7710
17,400	4270	6064	7074	7926
18,000	4371	6226	7261	8141
18,600	4471	6389	7448	8352
19,200	4571	6550	7629	8547
19,800	4669	6692	7791	8728
20,400	4760	6835	7952	8908
21,000	4851	6958	8114	9088
21,600	4941	7081	8276	9269
22,200	5032	7205	8438	9449
22,800	5123	7328	8599	9629
23,400	5214	7451	8761	9809
24,000	5305	7575	8905	9990
24,600	5395	7698	9045	10170
25,200	5486	7821	9185	10350
25,800	5577	7945	9326	10530
26,400	5668	8068	9463	10697
27,000	5759	8190	9593	10850
27,600	5849	8306	9724	10995
28,200	5936	8423	9854	11140



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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
28,800	6023	8539	9984	11285
29,400	6110	8655	10114	11430
30,000	6205	8782	10256	11588
30,600	6305	8915	10405	11754
31,200	6405	9048	10554	11921
31,800	6503	9181	10703	12087
32,400	6596	9315	10852	12253
33,000	6689	9448	11001	12419
33,600	6782	9581	11151	12605
34,200	6875	9716	11318	12791
34,800	6966	9861	11485	12977
35,400	7061	9998	11652	13163
36,000	7158	10132	11819	13349
36,600	7255	10266	11986	13535
37,200	7352	10399	12151	13721
37,800	7449	10533	12313	13908
38,400	7546	10666	12465	14092
39,000	7643	10800	12617	14274
39,600	7740	10933	12769	14456
40,200	7837	11067	12921	14623
40,800	7934	11201	13070	14769
41,400	8031	11334	13192	14906
42,000	8128	11453	13314	15041
42,600	8222	11564	13435	15177
43,200	8304	11674	13557	15313
43,800	8387	11785	13679	15448
44,400	8469	11895	13800	15584
45,000	8551	12006	13922	15720
45,600	8633	12116	14043	15855
46,200	8715	12227	14165	15991
46,800	8797	12337	14287	16126
47,400	8879	12448	14408	16262

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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
48,000	8961	12558	14530	16376
48,600	9043	12668	14642	16487
49,200	9125	12779	14742	16598
49,800	9207	12879	14841	16709
50,400	9290	12979	14941	16820
51,000	9372	13079	15041	16932
51,600	9455	13180	15140	17043
52,200	9538	13280	15240	17154
52,800	9621	13380	15340	17265
53,400	9703	13480	15439	17376
54,000	9786	13580	15539	17487
54,600	9869	13680	15639	17598
55,200	9952	13780	15738	17716
55,800	10034	13881	15838	17849
56,400	10117	13981	15954	17983
57,000	10200	14085	16074	18117
57,600	10283	14195	16194	18250
58,200	10369	14306	16314	18384
58,800	10455	14417	16434	18518
59,400	10542	14528	16554	18651
60,000	10628	14638	16674	18785
60,600	10715	14749	16793	18919
61,200	10801	14860	16913	19052
61,800	10888	14971	17033	19186
62,400	10974	15081	17153	19320
63,000	11061	15192	17273	19451
63,600	11147	15303	17392	19582
64,200	11234	15414	17509	19712
64,800	11320	15522	17626	19843
65,400	11406	15628	17743	19973
66,000	11490	15735	17860	20103
66,600	11575	15842	17977	20234



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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
67,200	11659	15949	18094	20364
67,800	11743	16056	18211	20495
68,400	11827	16163	18328	20625
69,000	11911	16270	18445	20755
69,600	11995	16377	18562	20886
70,200	12080	16483	18679	21016
70,800	12164	16590	18796	21147
71,400	12248	16697	18913	21277
72,000	12332	16804	19030	21408
72,600	12416	16911	19147	21538
73,200	12500	17018	19264	21668
73,800	12585	17125	19381	21799
74,400	12662	17232	19498	21936
75,000	12733	17338	19617	22076
75,600	12805	17445	19743	22216
76,200	12877	17560	19868	22356
76,800	12949	17676	19994	22496
77,400	13024	17785	20119	22636
78,000	13101	17885	20245	22776
78,600	13178	17984	20370	22916
79,200	13254	18083	20496	23056
79,800	13331	18182	20622	23196
80,400	13408	18282	20743	23336
81,000	13485	18381	20850	23476
81,600	13562	18480	20957	23616
82,200	13639	18579	21064	23756
82,800	13715	18678	21171	23896
83,400	13792	18778	21278	24035
84,000	13869	18877	21385	24154
84,600	13946	18976	21492	24273
85,200	14023	19075	21599	24393
85,800	14100	19174	21707	24512

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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
86,400	14177	19274	21814	24632
87,000	14253	19373	21921	24751
87,600	14338	19483	22039	24883
88,200	14424	19593	22158	25015
88,800	14509	19702	22276	25148
89,400	14594	19812	22395	25280
90,000	14679	19922	22514	25410
90,600	14764	20032	22632	25537
91,200	14849	20142	22751	25665
91,800	14934	20251	22865	25792
92,400	15019	20361	22979	25919
93,000	15104	20467	23093	26046
93,600	15189	20571	23207	26173
94,200	15272	20674	23320	26300
94,800	15349	20778	23434	26427
95,400	15427	20881	23548	26554
96,000	15504	20985	23662	26681
96,600	15582	21089	23776	26808
97,200	15659	21192	23890	26935
97,800	15736	21296	24004	27062
98,400	15814	21399	24118	27189
99,000	15891	21503	24232	27316
99,600	15969	21606	24346	27443
100,200	16046	21710	24460	27570
100,800	16123	21814	24574	27697
101,400	16201	21917	24688	27824
102,000	16278	22021	24802	27951
102,600	16356	22124	24916	28078
103,200	16433	22228	25030	28205
103,800	16510	22331	25143	28332
104,400	16588	22435	25257	28459
105,000	16665	22539	25371	28586



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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
105,600	16743	22642	25485	28713
106,200	16820	22746	25599	28840
106,800	16897	22849	25713	28966
107,400	16975	22953	25827	29093
108,000	17052	23056	25940	29219
108,600	17130	23160	26053	29345
109,200	17207	23266	26167	29471
109,800	17284	23372	26280	29598
110,400	17364	23478	26393	29724
111,000	17447	23584	26506	29850
111,600	17529	23690	26620	29976
112,200	17611	23796	26733	30103
112,800	17694	23902	26846	30229
113,400	17776	24008	26959	30355
114,000	17858	24114	27073	30481
114,600	17940	24220	27186	30608
115,200	18023	24326	27299	30734
115,800	18105	24432	27412	30860
116,400	18187	24538	27525	30986
117,000	18270	24644	27639	31113
117,600	18352	24750	27752	31239
118,200	18434	24856	27865	31365
118,800	18517	24962	27978	31491
119,400	18599	25068	28092	31618
120,000	18681	25174	28205	31744
120,600	18763	25280	28318	31870
121,200	18846	25386	28431	31997
121,800	18928	25492	28545	32123
122,400	19010	25598	28658	32249
123,000	19093	25704	28771	32375
123,600	19175	25810	28884	32502
124,200	19257	25916	28998	32628

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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
124,800	19339	26022	29111	32754
125,400	19422	26128	29224	32880
126,000	19504	26234	29337	33007
126,600	19586	26340	29450	33133
127,200	19669	26447	29564	33259
127,800	19748	26553	29677	33385
128,400	19827	26659	29790	33512
129,000	19905	26765	29903	33638
129,600	19983	26871	30017	33764
130,200	20062	26977	30130	33892
130,800	20140	27080	30243	34022
131,400	20219	27181	30357	34152
132,000	20297	27282	30473	34281
132,600	20376	27383	30590	34411
133,200	20454	27484	30706	34541
133,800	20533	27585	30820	34671
134,400	20611	27686	30931	34801
135,000	20688	27787	31042	34931
135,600	20765	27888	31153	35060
136,200	20842	27989	31264	35190
136,800	20918	28090	31375	35319
137,400	20995	28191	31486	35442
138,000	21072	28292	31597	35566
138,600	21149	28392	31708	35690
139,200	21225	28493	31819	35814
139,800	21302	28594	31930	35937
140,400	21379	28695	32041	36061
141,000	21456	28796	32152	36185
141,600	21532	28897	32263	36309
142,200	21609	28998	32374	36432
142,800	21686	29099	32485	36556
143,400	21763	29200	32596	36680



COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
144,000	21839	29301	32707	36804
144,600	21916	29402	32818	36928
145,200	21993	29503	32929	37051
145,800	22070	29604	33040	37175
146,400	22147	29705	33151	37299
147,000	22223	29805	33262	37423
147,600	22300	29906	33373	37546
148,200	22377	30007	33484	37670
148,800	22454	30108	33595	37794
149,400	22530	30209	33706	37918
150,000	22607	30310	33817	38041
150,600	22684	30411	33928	38165
151,200	22761	30512	34039	38289
151,800	22837	30613	34150	38413
152,400	22914	30714	34261	38536
153,000	22991	30815	34372	38660
153,600	23068	30916	34483	38784
154,200	23144	31017	34594	38908
154,800	23221	31118	34705	39031
155,400	23298	31219	34816	39155
156,000	23375	31319	34927	39279
156,600	23452	31420	35038	39403
157,200	23528	31521	35149	39527
157,800	23605	31622	35260	39650
158,400	23682	31723	35371	39774
159,000	23759	31824	35482	39898
159,600	23835	31925	35593	40022
160,200	23912	32026	35704	40145
160,800	23989	32127	35815	40269
161,400	24066	32228	35926	40393
162,000	24142	32329	36037	40517
162,600	24219	32430	36148	40640

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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
163,200	24296	32531	36259	40764
163,800	24373	32632	36370	40888
164,400	24449	32732	36481	41012
165,000	24526	32833	36592	41135
165,600	24603	32934	36703	41259
166,200	24680	33035	36814	41383
166,800	24757	33136	36925	41507
167,400	24833	33237	37036	41630
168,000	24910	33338	37147	41735
168,600	24987	33439	37258	41836
169,200	25064	33540	37366	41937
169,800	25140	33641	37457	42039
170,400	25217	33742	37548	42140
171,000	25294	33837	37639	42242
171,600	25371	33924	37730	42343
172,200	25447	34012	37821	42445
172,800	25520	34100	37912	42546
173,400	25591	34187	38003	42648
174,000	25662	34275	38094	42749
174,600	25733	34363	38184	42850
175,200	25804	34451	38275	42952
175,800	25876	34538	38366	43053
176,400	25947	34626	38457	43155
177,000	26018	34714	38548	43256
177,600	26089	34802	38639	43358
178,200	26160	34889	38730	43459
178,800	26231	34977	38821	43561
179,400	26302	35065	38912	43662
180,000	26374	35152	39003	43764
180,600	26445	35240	39094	43865
181,200	26516	35328	39185	43966
181,800	26587	35416	39276	44068
182,400	26658	35503	39367	44169
183,000	26729	35591	39458	44271
183,600	26801	35679	39549	44372
184,200	26872	35767	39640	44474



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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
184,800	26943	35854	39731	44575
185,400	27014	35942	39822	44677
186,000	27085	36030	39913	44778
186,600	27156	36117	40004	44879
187,200	27227	36205	40095	44981
187,800	27299	36293	40186	45082
188,400	27370	36381	40277	45184
189,000	27441	36468	40368	45285
189,600	27512	36556	40459	45387
190,200	27583	36644	40550	45488
190,800	27654	36732	40641	45590
191,400	27725	36819	40732	45691
192,000	27797	36907	40823	45793
192,600	27868	36995	40914	45894
193,200	27939	37082	41005	45995
193,800	28010	37170	41096	46097
194,400	28081	37258	41187	46198
195,000	28151	37346	41278	46300
195,600	28216	37433	41369	46401
196,200	28282	37521	41460	46503
196,800	28347	37609	41551	46604
197,400	28412	37697	41642	46706
198,000	28478	37784	41733	46807
198,600	28543	37864	41824	46908
199,200	28608	37945	41915	47010
199,800	28674	38025	42006	47111
200,400	28739	38106	42097	47213
201,000	28804	38187	42188	47314
201,600	28870	38267	42272	47416
202,200	28935	38348	42356	47517
202,800	29000	38428	42439	47619
203,400	29066	38509	42523	47720
204,000	29131	38589	42606	47821
204,600	29196	38670	42690	47917
205,200	29262	38750	42773	48010
205,800	29327	38831	42857	48103
206,400	29392	38912	42941	48196
207,000	29458	38992	43024	48289
207,600	29523	39073	43108	48383

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COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
208,200	29588	39153	43191	48476
208,800	29654	39234	43275	48569
209,400	29719	39314	43358	48662
210,000	29784	39395	43442	48755
210,600	29850	39476	43525	48848
211,200	29915	39556	43609	48942
211,800	29980	39637	43693	49035
212,400	30046	39717	43776	49128
213,000	30111	39798	43860	49221
213,600	30176	39878	43943	49314
214,200	30242	39959	44027	49407
214,800	30307	40039	44110	49501
215,400	30372	40120	44194	49594
216,000	30438	40201	44277	49687
216,600	30503	40281	44361	49780
217,200	30568	40362	44445	49873
217,800	30634	40442	44528	49966
218,400	30699	40523	44612	50060
219,000	30764	40603	44695	50153
219,600	30830	40684	44779	50246
220,200	30895	40765	44862	50339
220,800	30960	40845	44946	50432
221,400	31026	40926	45029	50525
222,000	31091	41006	45113	50619
222,600	31156	41087	45197	50712
223,200	31222	41167	45280	50805
223,800	31287	41248	45364	50898
224,400	31352	41329	45447	50991
225,000	31418	41409	45531	51084
225,600	31483	41490	45614	51178
226,200	31548	41570	45698	51271
226,800	31614	41651	45782	51364
227,400	31679	41731	45865	51457
228,000	31744	41812	45949	51550
228,600	31810	41892	46032	51643
229,200	31875	41973	46116	51737
229,800	31941	42054	46199	51830
230,400	32006	42134	46283	51923



DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC. § 16-916.01a

COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR or MORE CHILDREN
231,000	32071	42215	46366	52016
231,600	32137	42295	46450	52109
232,200	32202	42376	46534	52202
232,800	32267	42456	46617	52296
233,400	32333	42537	46701	52389
234,000	32398	42618	46784	52482
234,600	32463	42698	46868	52575
235,200	32529	42779	46951	52668
235,800	32594	42859	47035	52761
236,400	32659	42940	47118	52855
237,000	32725	43020	47202	52948
237,600	32790	43101	47286	53041
238,200	32855	43181	47369	53137
238,800	32921	43262	47453	53235
239,400	32986	43343	47536	53332
240,000	33051	43423	47621	53429

APPENDIX II

Worksheet A: Sole Physical Custody

Name of Petitioner: _____	
Name of Respondent: _____	
Jacket Number _____	IV-D Number _____

Children	Dates of Birth	Children	Dates of Birth

PART I. BASIC OBLIGATION	Petitioner	Respondent	Combined
1. GROSS INCOME	\$	\$	
a. Plus or minus alimony [§ 16-916.01 (d)(3)]			
b. Minus prior child support orders [§ 16-916.01 (d)(4)]			
c. Adjustment for additional children living in the home [§ 16-916.01 (d)(5)]			
2. ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF ADJUSTED GROSS INCOME (Each parent's Line 2 divided by combined Line 2)	%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule [§ 16-916.01(f)(2)])	\$		



5. EACH PARENT'S SHARE OF THE BASIC CHILD SUPPORT OBLIGATION (Line 3 x Line 4 for each parent)		\$	\$
<b>PART II. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent)</b>			
6a. Children's Portion of Health Insurance Premium [§ 16-916.01 (i)]		\$	\$
6b. Extraordinary Medical Expenses [§ 16-916.01 (j)] (if not paid directly to provider)		\$	\$
6c. Child Care Expenses [§ 16-916.01 (k)] (if not paid directly to provider)		\$	\$
6d. Total Adjustments (For each parent, add Lines 6a, 6b, and 6c)	\$	\$	\$
7. EACH PARENT'S SHARE OF ADDITIONAL EXPENSES (Line 3 for each parent x Line 6d Combined)		\$	\$
8. BASIC OBLIGATION PLUS ADDITIONAL EXPENSES (Line 5 + Line 7 for each parent)		\$	\$
9. ADJUSTMENT FOR PARENT WITH A LEGAL DUTY TO PAY SUPPORT (For the parent with whom the child does not primarily reside, Enter Line 6d)		\$	
10. RECOMMENDED CHILD SUPPORT ORDER (Subtract Line 9 from Line 8 for the paying parent only)		\$	
<b>PART III. LOW INCOME ADJUSTMENT [§ 16-916.01(m)]</b>			
11. SELF SUPPORT RESERVE		\$ 12,382	

§ 16-916.01a PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

12. PAYING PARENT'S INCOME AVAILABLE FOR SUPPORT (Subtract Line 11 from Line 2 for paying parent)	\$
13. ADJUSTED CHILD SUPPORT ORDER (Lesser of Line 10 or Line 12, or minimum order according to § 16-916.01(g)(1))	
Comments, calculations, or rebuttals.	
Prepared By:	Date:



APPENDIX III

Worksheet B: Shared Physical Custody

Name of _____ Petitioner: _____ _____ Name of _____ Respondent: _____ _____ Jacket Number _____ IV-D Number _____ _____	
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Children	Dates of Birth	Children	Dates of Birth

PART I. BASIC OBLIGATION	Petitioner	Respondent	Combined
1. GROSS INCOME	\$	\$	
a. Plus or minus alimony [§ 16-916.01 (d)(3)]			
b. Minus prior child support orders [§ 16-916.01 (d)(4)]			
c. Adjustment for additional children living in the home [§ 16-916.01 (d)(5)]			
2. ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF ADJUSTED GROSS INCOME (Each parent's Line 2 divided by Combined Line 2)	%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule)	\$		
PART II. SHARED CUSTODY ADJUSTMENT [§ 16-916.01(q)]			

# § 16-916.01a PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

5. ADJUSTED BASIC CHILD SUPPORT (Line 4 x 1.50)		\$	
6. Each Parent's Share of Adjusted Basic Child Support (Line 5 x each parent's Line 3)	\$	\$	
7. Time with Each Parent (must total 365)	365		
8. Percentage of Time with Each Parent (each parent's Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x Line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - Line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on Line 10 from larger amount on Line 10. Parent with larger amount on Line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
<b>PART III. ADJUSTMENT FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent)</b>			
12a. Children's Portion of Health Insurance Premium [§ 16-916.01 (i)]	\$	\$	
12b. Extraordinary Medical Expenses [§ 16-916.01 (j)] (if not paid directly to provider)	\$	\$	
12c. Child Care Expenses [§ 16-916.01 (k)] (if not paid directly to provider)	\$	\$	
12d. Total Adjustments (For each parent, add Lines 12a, 12b, and 12c)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Each parent's Line 3 x Line 12d Combined)	\$	\$	
14. Each Parent's Net Share of Additional Expenses (Each parent's Line 13 - Line 12d. If negative, enter \$0.)	\$	\$	



15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on Line 14 from larger amount on Line 14. Parent with larger amount on Line 14 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$
<b>PART IV. RECOMMENDED CHILD SUPPORT ORDER</b>		
16. TOTAL AMOUNT TRANSFERRED (Line 11 + Line 15)	\$	\$
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on Line 16 from larger amount on Line 16. Parent with larger amount on Line 16 owes the other parent the difference.)	\$	\$
Comments, calculations, or rebuttals.		
Prepared By:	Date:	

The above appendices are in addition to § 16-916.01, Child Support Guideline [Formerly § 16-916.1]. For full legislative history please see § 16-916.01.

### **§ 16-916.02. Child Support Guideline Commission.**

(a) There is established a Child Support Guideline Commission (“Commission”). The Commission shall study and make recommendations on the child support guidelines to the Mayor.

(b) The Commission shall consist of a chairperson and 8 members who are District of Columbia residents. The Chief Judge of the Superior Court of the District of Columbia may appoint 2 members. The Mayor shall appoint the chairperson as well as 2 members, one of whom shall be a member of the District of Columbia Bar (“Bar”) and an expert in the fields of family law and child support. The Mayor shall also appoint one member to represent the Child Support Enforcement Division of the Office of the Corporation Counsel (“CSED”). The Council shall designate one Councilmember to serve on the Commission and shall appoint 2 additional members, one of whom shall be a member of the Bar and an expert in the fields of family law and child support.

(c)(1) Of the Commission members first appointed after the effective date of the Child Support Guideline Commission Restructuring Emergency Act of 2002 (“Commission Restructuring Act”) [July 23, 2002], one member appointed by the Chief Judge of the Superior Court of the District of Columbia, the non-Bar member appointed by the Council, the Bar member appointed by the Mayor, and the CSED representative appointed by the Mayor shall serve 2-year terms. All of the other initial appointments after the effective date of the Commission Restructuring Act [July 23, 2002] shall serve 4-year terms. Thereafter, all Commission members shall serve for a term of 4 years from the date of appointment. A Commission member may be reappointed. A person

appointed to fill a vacancy on the Commission occurring prior to the expiration of a term shall serve for the remainder of the term. A vacancy shall be filled in the same manner as the original appointment.

(2) A majority of the members shall constitute a quorum. A quorum shall be necessary for the Commission to conduct business.

(d) The functions of the Commission shall include:

(1) To review and recommend updates of the child support guidelines not less than once every 4 years.

(2) To review pertinent economic data, including poverty levels, and information on the functioning of the guidelines that the Commission gathers or that is brought to the attention of the Commission for the purpose of recommending changes to the guidelines.

(3) To hold a public meeting at least annually to receive oral or written comments from members of the Bar or the public. Thirty days public notice shall be given for a public meeting.

(4) To perform other tasks as necessary to develop, update, or monitor the guidelines and to ensure that the District of Columbia is in compliance with the federal mandates in section 467 of the Social Security Act, approved August 16, 1984 (98 Stat. 1321; 42 U.S.C. § 667).

(e) The Commission, as restructured pursuant to the Child Support Guideline Commission Restructuring Act [this section], shall convene no later than December 31, 2002, and shall issue initial recommendations no later than December 31, 2003.

(f) Members of the Commission shall serve without compensation but shall be reimbursed for any reasonable expense associated with service on the Commission.

(g) The Mayor shall provide sufficient space for the Commission to operate and may detail personnel to assist the Commission. The Mayor shall also direct any agency contacted by the Commission to give full cooperation to the Commission.

(July 25, 1990, D.C. Law 8-150, § 3, 37 DCR 372; Oct. 1, 2002, D.C. Law 14-190, § 2902, 49 DCR 6968.)

**Cross references.** — Mayoral nomination to Child Support Guideline Commission, review and approval of Council, see § 1-523.01.

**Prior Codifications.** — 1981 Ed., § 16-916.2.

**Effect of amendments.** — D.C. Law 14-190 rewrote the section.

**Temporary Addition of Section.** — For temporary (225 day) addition of § 16-916.2 1981 Ed., see § 2(b) of the Child Support Guideline Amendment Temporary Act of 1989 (D.C. Law 8-90, March 15, 1990, law notification 37 DCR 2073).

**Emergency legislation.** — See note to § 16-916.01.

For temporary (90 day) amendment of section, see § 2802 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

**Legislative history of Law 8-150.** — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 16-916.01.

**Legislative history of Law 14-190.** — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

**Short title.** — Short title of title XXIX of Law 14-190: Section 2901 of D.C. Law 14-190 provided that title XXIX of the act may be cited



as the Child Support Guideline Commission Restructuring Act of 2002.

**Editor's notes.** — Section 28(b)(2) of D.C.

Law 15-354 provided that the section designation of § 16-916.2 of the District of Columbia Official Code is redesignated as § 16-916.02.

#### CASE NOTES

##### **In general.**

Trial judge's error in concluding that emergency child support guidelines did not apply in paternity action was harmless, where amount of support actually awarded was consistent with guidelines. D.C. Code 1981, §§ 16-916, 16-916.1, 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

Emergency child support guidelines were applicable to paternity action in which judge signed final order the day after guidelines became law, even though guidelines were in effect for less than three months. D.C. Code 1981,

§§ 16-916, 16-916.1, 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

If father of child born out of wedlock has some demonstrable reason for being excused from his parental duty of support, burden falls on him to persuade court to excuse him, and if he does not carry that burden of persuasion then court should generally order child support payments retroactive to child's birth. D.C. Code 1981, §§ 16-916.1, 16-916.1(b)(1), (l), 16-916.2. J.A.W. v. D.M.E., 591 A.2d 844, 1991 D.C. App. LEXIS 116 (1991).

### **§ 16-916.03. Proceedings in which child support matters may be considered.**

The court may consider child support matters, as it deems appropriate, in any proceeding to determine the care and custody of a minor child or children.

(Apr. 18, 1996, D.C. Law 11-112, § 2(c), 43 DCR 574.)

**Prior Codifications.** — 1981 Ed., § 16-916.3.

**Legislative history of Law 11-112.** — Law 11-112, the "Joint Custody of Children Act of 1996," was introduced in Council and assigned Bill No. 11-026, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively.

Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-202 and transmitted to both Houses of Congress for its review. D.C. Law 11-112 became effective on April 18, 1996.

**Editor's notes.** — Section 28(b)(2) of D.C. Law 15-354 provided that the section designation of § 16-916.3 of the District of Columbia Official Code is redesignated as § 16-916.03.

### **§ 16-917. Co-respondents as defendants; service of process. [Repealed].**

Repealed.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 19, 2002, D.C. Law 14-207, 2(l), 49 DCR 7827.)

**Prior Codifications.** — 1981 Ed., § 16-917. 1973 Ed., § 16-917.

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

### **§ 16-918. Appointment of counsel; compensation; termination of appointment.**

(a) In all cases under this chapter, where the court deems it necessary or proper, a disinterested attorney may be appointed by the court to enter his appearance for the defendant and actively defend the cause.

(b) In any proceeding wherein the custody of a child is in question, the court

may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.

(c) An attorney appointed under this section may receive such compensation for his services as the court determines to be proper, which the court may order to be paid by either or both of the parties.

(d) Notwithstanding any other provision of law or any rule of court, the appearance of an attorney in any action under this chapter before a court of original jurisdiction shall be deemed to have terminated for the purpose of service of any motion, process, or any other pleading, upon completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of the final disposition of the appeal. There shall be no action required of any person or attorney under this subsection, but the court having jurisdiction over the matter may suspend the termination of the appearance on its own motion, or on the motion of any party to the case prior to the expiration of the time for appeal.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 562; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(e)(3)(A); Apr. 7, 1977, D.C. Law 1-107, title I, § 110, 23 DCR 8737.)

**Prior Codifications.** — 1981 Ed., § 16-918.  
1973 Ed., § 16-918.

**Legislative history of Law 1-107.** — For

legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

## CASE NOTES

### ANALYSIS

Adverse interests.

Appointment of counsel.

Attorney fees.

Contempt.

In general.

Minimum fees.

Psychological experts fees.

Witnesses.

### Adverse interests.

Members of same law firm may not represent adverse parties. *Borden v. Borden*, 277 A.2d 89, 1971 D.C. App. LEXIS 306 (1971).

Refusal to vacate order appointing attorney employed by Neighborhood Legal Services Program to represent defendant in divorce action when plaintiff was already represented by lawyer from such program was error as the order created possibility of conflict of interest, even though neither attorney would have received compensation, and there was no showing that supply of other available attorneys had been exhausted. 42 U.S.C. § 2809(a)(3). *Borden v. Borden*, 277 A.2d 89, 1971 D.C. App. LEXIS 306 (1971).

### Appointment of counsel.

In absence of evidence of unfair surprise or

prejudice resulting from timing of motion for compensation for services by appointed counsel in domestic relations action, motion filed approximately two months after judgment was docketed was considered timely. D.C. Code 1981, § 16-918(c); Domestic Relations Rule 17(d)(1). *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Where Court of Appeals was confident that issue of appointment of certain attorneys employed by Neighborhood Legal Services Program to represent defendant in proceedings initiated by indigent plaintiffs also represented by Neighborhood Legal Services Program attorneys would be resolved, Neighborhood Legal Services Program was not entitled to writ of mandamus or prohibition against court directing cessation of such appointments on theory that its attorneys would thereby be forced to violate Code of Professional Responsibility and could not under the circumstances be "disinterested" attorneys as required by Code. D.C. Code § 16-918. *Neighborhood Legal Services Program v. Ryan*, 276 A.2d 728, 1971 D.C. App. LEXIS 308 (1971).

The fact appointment of an attorney and Guardian Ad Litem was on the Court's own initiative should have no bearing on that attor-



ney's entitlement to compensation for professional services rendered. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

#### Attorney fees.

Trial court has inherent authority to assess a plaintiff's attorney's fees personally against counsel for defendant, despite absence of statute or court rule expressly providing for that sanction, when defense counsel repeatedly ignores court orders to answer complaint, if counsel acts in bad faith. *Charles v. Charles*, 505 A.2d 462, 1986 D.C. App. LEXIS 286 (1986).

Factors to be considered in determining award of attorney fees to appointed counsel in domestic relations case include: necessity for services of attorney, quality and nature of work performed, financial ability of party ordered to pay, and fault of the nonaggrieved party. D.C. Code 1981, §§ 16-911(a)(1), 16-914(a), 16-916, 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Award of attorney fees under statute providing for award for appointed counsel in domestic relations cases is a collateral issue to the main cause of action, and thus not subject to timeliness requirements of rule on alteration or amendment of judgments. D.C. Code 1981, § 16-918; Domestic Relations Rule 59(e). *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

In determining timeliness of an appointed attorney's motion for compensation for domestic relations case, trial court is required to exercise its discretion to deny fees in cases in which postjudgment motion unfairly surprises or prejudices the affected party. D.C. Code 1981, § 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Once attorney fee award is deemed appropriate under statute providing for fees to appointed counsel in domestic relations cases, trial court has discretion not only to set amount of fee but to decide which party must pay; judgment must be an exercise of informed discretion. D.C. Code 1981, § 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

Record was not sufficient to support award of attorney fees in child custody action to counsel appointed for party who did not obtain custody in light of lack of information about ability to pay of party ordered to pay. D.C. Code 1981, § 16-918. *Kelly v. Clyburn*, 490 A.2d 188, 1985 D.C. App. LEXIS 341 (1985).

The literal language of subsection (b) does not speak in terms addressing explicitly "child support," but "child support" is a logical component embraced within the concept of "the custody of a child" as set forth in that subsection and for legal purposes of the child support law; although age 35, because of mental handicap and intellectual impairment, and incapacity for

independent living, a person could be treated as a "child" under that language and within the philosophy and legal principles established by the District of Columbia Court of Appeals. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

#### Contempt.

Where record contained nothing to indicate that alleged contemnor ever knew that he was obliged to file an answer on behalf of his client by deadline fixed by court or show cause why he should not be held in contempt, and within time for entry of order contemnor filed motion to vacate appointment as attorney for his client upon ground that appointment created conflict of interest, thereby raising substantial question of law requiring ruling by court before contemnor could be deemed in contempt, alleged contemnor was not given sufficient notice of his alleged misconduct or sufficient opportunity to answer such charge to support contempt order. D.C. Code § 16-918. *In re Rabin*, 276 A.2d 729, 1971 D.C. App. LEXIS 307 (1971).

#### In general.

An attorney appointed pursuant to statute providing that in all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be appointed by the court to enter his appearance for the defendant and actively defend his cause, must be present at a divorce fact-finding hearing, even if he has been unable to contact the defendant, and it was error to grant a divorce without a fact-finding hearing at which the appointed attorney was present. D.C. Code §§ 16-918, 16-918(a), 16-919; D.C. Code SCR, Dom.Rel.Rule 17(d)(3)(II). *Campbell v. Campbell*, 325 A.2d 188, 1974 D.C. App. LEXIS 273 (1974).

Court of Appeals is reluctant to approve any action in matter of professional ethics which distinguishes between attorneys who are in private practice and attorneys who are not. 42 U.S.C. § 2809(a)(3). *Borden v. Borden*, 277 A.2d 89, 1971 D.C. App. LEXIS 306 (1971).

#### Minimum fees.

Indigents bringing divorce suits in forma pauperis are not required to pay the \$100 minimum attorneys' fees. D.C. Code §§ 15-712, 16-918. *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Where record in divorce action did not reveal whether attorney appointed for wife had received minimum fee, or whether there had been consideration by court of attorney's request for additional remuneration, Court of Appeals lacked basis upon which to determine whether proper compensation was denied, and upon remand trial court would be directed to address

itself both to question of fair compensation of attorney for representing wife at prior proceedings and to question of compensation for any subsequent petition which might be submitted as result of new trial. D.C. Code § 16-918; D.C. Code SCR, Dom.Rel.Rule 17(d). *Feaster v. Feaster*, 359 A.2d 272, 1976 D.C. App. LEXIS 313 (1976).

**Psychological experts fees.**

Where the psychological evaluation and the testimony of a psychologist were critical to the Court's decision, the request for payment of the psychologist's fee was granted. *Harris v. Harris*, 119 WLR 665 (Super. Ct. 1991).

**Witnesses.**

New counsel should have been appointed to represent child in adoption proceeding, where guardian ad litem, who had been appointed as

advocate for child, was called as witness for one of the opposing parties. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Error arising when trial judge allowed child's guardian ad litem to serve dual roles as attorney and witness at show cause hearing on adoption petition did not result in miscarriage of justice, where judge did not uncritically adopt lay opinions of guardian ad litem, but instead independently evaluated evidence, weighed options for child, and reached his own conclusion that adoption was in child's best interest. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

**§ 16-919. Proof required on default or admission of defendant.**

A decree for a divorce, or a decree annulling a marriage, may not be rendered on default, without proof; and an admission contained in the answer of the defendant may not be taken as proof of the facts charged as the ground of the application, but shall be proved by other evidence in all cases.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 562.)

**Prior Codifications.** — 1981 Ed., § 16-919. 1973 Ed., § 16-919.

**§ 16-920. Effective date of decree or judgment for annulment or absolute divorce.**

A decree or judgment annulling or dissolving a marriage, or granting an absolute divorce, shall become effective to dissolve the bonds of matrimony 30 days after the docketing of the decree or judgment unless either party applies for a stay with the Superior Court of the District of Columbia or the District of Columbia Court of Appeals. If the application for a stay is denied, the judgment will become final upon entry of the court's order denying the stay. If the application for a stay is granted, the stay shall continue in effect until the conclusion of the appeal. If the parties desire immediate finality, they may file a joint waiver of the right to appeal, which will make the decree or judgment final upon docketing of the joint waiver.

(Dec. 23, 1963, 77 Stat. 563, Pub. L. 88-241, § 1; Sept. 29, 1965, 79 Stat. 890, Pub. L. 89-217, § 4; Oct. 19, 2002, D.C. Law 14-207, § 2(m), 49 DCR 7827.)

**Prior Codifications.** — 1981 Ed., § 16-920. 1973 Ed., § 16-920.

**Effect of amendments.** — D.C. Law 14-207 rewrote the section which had read as follows:

"A decree, annulling or dissolving a marriage, or granting an absolute divorce, shall not become effective until the time for noting an appeal shall have expired, and, if notice of



appeal has been entered, such decree shall not become effective until the date of the final disposition of the appeal."

**Legislative history of Law 14-207.** — For Law 14-207, see notes following § 16-904.

### CASE NOTES

#### ANALYSIS

**In general.**

Legislative intent and purposes.

#### **In general.**

Foreign child support modification order did not operate as *res judicata* as to former wife's claim for arrears, where at least a portion of the time period for which former wife sought added support apparently is not embraced by the foreign order. *Cox v. Cox*, 707 A.2d 1297, 1998 D.C. App. LEXIS 36 (1998).

The District of Columbia Court of Appeals declined to extend application of doctrine of revocation by implication, which holds that divorce automatically revokes any existing will's bequest to former spouse regardless of testator's actual intent, to revoke husband's beneficiary designation in his life insurance policy naming his former wife as the beneficiary where he had redesignated his former wife as the life insurance beneficiary on the same day judgment of absolute divorce had been entered. *Bolle v. Hume*, 619 A.2d 1192, 1993 D.C. App. LEXIS 33 (1993).

Under statute providing that no divorce shall be absolute and take effect until six months after its date, any marriage contracted by party to divorce within such period is bigamous. D.C. Code 1961, § 16-920. *Jay v. Jay*, 212 A.2d 331, 1965 D.C. App. LEXIS 221 (App. 1965).

Ceremonial marriage performed in Maryland before one of the parties' District of Columbia

divorce from another had become absolute was void *ab initio* and not merely voidable. D.C. Code 1961, § 16-920. *Jay v. Jay*, 212 A.2d 331, 1965 D.C. App. LEXIS 221 (App. 1965).

Whether husband who had been granted absolute divorce should be allowed custody of child initially awarded wife, on condition that she would not allow corespondent in her living quarters, by reason of wife's entering into void ceremonial marriage with corespondent before divorce had become absolute was question for trial court to which case would be remanded by court of appeals finding that trial court which denied custody change had erred in concluding that ceremonial marriage was merely voidable. D.C. Code 1961, § 16-920. *Jay v. Jay*, 212 A.2d 331, 1965 D.C. App. LEXIS 221 (App. 1965).

#### **Legislative intent and purposes.**

**Legislative intent.**—Absent explicit language extending a stay to all provisions within divorce decrees, the legislature did not intend to broaden this section when it was last amended in 1965, as broader reading would invariably also delay alimony, child support, and custody rulings in every case on the domestic relations calendar. Indeed, if such an interpretation were to prevail, an unsavory practice may develop whereby all satellite rulings in divorce or annulment cases would be reserved until the divorce became effective. *Fowlkes v. Fowlkes*, 120 WLR 2589 (Super. Ct. 1992).

## § 16-921. Validity of marriage, action to determine.

When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned.

(Dec. 23, 1963, Pub. L. 88-241, § 1; 77 Stat. 563.)

**Prior Codifications.** — 1981 Ed., § 16-921.

1973 Ed., § 16-921.

### CASE NOTES

#### **In general.**

Courts accord full faith and credit to decrees of divorce entered by courts of another nation, if such decrees are entered under circumstances such that they would be given full force and

credit if entered in another state. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Mere consent of divorcing couple cannot create or confer jurisdiction upon courts of foreign

country or sister state to grant divorce decree. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexican court. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained, and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Generally, only state where one of parties is domiciled has right to grant decree of divorce, but exception is that where adverse party to proceeding in stranger state enters appearance and has full opportunity to present jurisdictional issue to its courts before divorce is granted, final decree, if not subject to collateral attack in state where it is entered, is entitled to full faith and credit in any other state where its validity is assailed on jurisdictional grounds. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

Where woman sued by alleged common-law wife for order declaring validity of common-law marriage filed counterclaim seeking declaration that, as lawful wife, she was entitled to interest in property owned by male defendant, defendant woman was not entitled to thereafter contend that court was limited to determination of marital status of plaintiff. D.C. Code 1961, § 16-921. *Lee v. Lee*, 201 A.2d 873, 1964 D.C. App. LEXIS 249 (App. 1964).

## § 16-922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.

This chapter does not invalidate any marriage solemnized according to law before January 1, 1902, or any decree or judgment of divorce pronounced before that date.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 563.)

**Prior Codifications.** — 1981 Ed., § 16-922. 1973 Ed., § 16-922.

## § 16-923. Abolition of action for breach of promise, alienation of affections, and criminal conversation.

Causes of action for breach of promise, alienation of affections, and criminal conversation are hereby abolished.

(Apr. 7, 1977, D.C. Law 1-107, title I, § 111(a), 23 DCR 8737.)

**Prior Codifications.** — 1981 Ed., § 16-923. 1973 Ed., § 16-923. legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

**Legislative history of Law 1-107.** — For

## § 16-924. Expedited judicial hearing for child support.

(a) In any case brought under D.C. Official Code, section 11-1101(1), (3), (10), or (11), involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a magistrate judge in the Family Court of the Superior Court finds that there is an existing duty of support, the magistrate judge shall conduct a hearing on support and, within 30 days from the conclusion of the hearing, the magistrate judge shall



issue written findings of fact and conclusions of law that shall include, but not be limited to, the following:

- (1) The name and relationship of the parties;
- (2) The name, age, and any exceptional information about the child;
- (3) The duty of support owed;
- (4) The amount of monthly support payments;
- (5) The annual earnings of the parents;
- (6) The social security number of the parents;
- (7) The name, address, and telephone number of each parent's employer;
- (8) The name, address, and telephone number of any person, organization, corporation, or government entity that holds real or personal assets of the obligor; and

(9) A statement that a responsible relative is bound by this order to notify the Court within 10 days of any change in address or employment.

(b) The alleged responsible relative may be represented by counsel at any stage of the proceedings.

(c) If in a case under subsection (a) of this section the magistrate judge finds that the case involves complex issues requiring judicial resolution, the magistrate judge shall establish a temporary support obligation and refer unresolved issues to a judge, except that the magistrate judge shall not establish a temporary support order if parentage is at issue.

(d) In cases under subsections (a) and (c) of this section in which the magistrate judge finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceedings under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the magistrate judge shall enter a default order.

(e) Subject to subsection (f) of this section, the findings of the magistrate judge shall constitute a final order of the Superior Court.

(f) A review of the magistrate judge's findings in a case under subsections (a) and (c) of this section may be made by a judge of the Family Court sua sponte and shall be made upon the motion of 1 of the parties, which shall be filed within 30 days after the judgment. An appeal to the District of Columbia Court of Appeals may be made only after a hearing is held in the Superior Court.

(Feb. 24, 1987, D.C. Law 6-166, § 33(a)(5)(B), 33 DCR 6710; Mar. 16, 1995, D.C. Law 10-223, § 2(f), 41 DCR 8051; Mar. 24, 1998, D.C. Law 12-81, § 10(h), 45 DCR 745; Jan. 8, 2002, Pub. L. 107-114, §§ 2(d)(2), 5(a)(2), 115 Stat. 2101, 2113; Oct. 19, 2002, D.C. Law 14-207, § 2(n), 49 DCR 7827.)

**Prior Codifications.** — 1981 Ed., § 16-924.

**Effect of amendments.** — Pub. L. 107-114 substituted "magistrate judge" for "hearing commissioner" wherever it appears in the section; in subsecs. (a) and (f), substituted "Family Court" for "Family Division"; and, in subsec. (f), substituted "magistrate judge's" for "hearing commissioner's".

D.C. Law 14-207, in the section heading, added "for child support" after "Expedited judicial hearing".

**Legislative history of Law 6-166.** — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 16-573.

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see Historical and Statutory Notes following § 16-909.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-916.01.

**Legislative history of Law 14-207.** — For

Law 14-207, see notes following § 16-904.

**Editor's notes.** — Mayor authorized to issue rules: See note to § 16-909.02.

## § 16-925. Privacy protection for victims of domestic violence.

(a) The Mayor shall promulgate rules and establish procedures to implement safeguards, applicable to all confidential information handled by the IV-D agency or executive branch agencies in cooperative agreements with the IV-D agency, to protect the privacy rights of parties in IV-D agency proceedings. These safeguards shall include the following:

(1) Prohibitions against the unauthorized use or disclosure of information relating to paternity, support, or custody actions in IV-D agency proceedings;

(2) Prohibitions against the release of information concerning the whereabouts of one party or a child to another party, if a protection order has been entered (in the District or in another jurisdiction) to protect the party or the child whose whereabouts are being sought from the party seeking disclosure;

(3) Prohibitions against release of information concerning the whereabouts of one party or a child to another party if the Mayor has reason to believe that the release of the information may result in physical or emotional harm to the party or the child whose whereabouts are being sought;

(4) Requirements to notify the Secretary of the U.S. Department of Health and Human Services when:

(A) The Mayor has reasonable evidence of domestic violence or child abuse against a party or a child; or

(B) The disclosure of information concerning the whereabouts of the party or the child could be harmful to the party or the child; and

(5) In cases where the Secretary of the U.S. Department of Health and Human Services ("Department") has informed the IV-D agency that the Department has been notified that there is reasonable evidence of domestic violence or child abuse, requirements to determine whether disclosure of information concerning a party's or child's whereabouts to any other person would be harmful to a party or the child, and if so, to prohibit the disclosure.

(b) The Superior Court shall establish procedures to implement safeguards, applicable to all confidential information possessed by the Superior Court, to protect the privacy rights of parties in paternity or support proceedings. These safeguards shall include:

(1) Prohibitions against unauthorized use or disclosure of information relating to paternity, support, or custody actions in Superior Court proceedings;

(2) Prohibitions against the release of information concerning the whereabouts of one party or a child to another party, if a protection order has been entered (in the District or in another jurisdiction) to protect the party or the child whose whereabouts are being sought from the party seeking disclosure;

(3) Prohibitions against release of information concerning the whereabouts of one party or a child to another party if the Superior Court has reason to believe that the release of information may result in physical or emotional harm to the party or the child whose whereabouts are being sought;



(4) Requirements to notify the Secretary of the U. S. Department of Health and Human Services when:

(A) The Superior Court has reasonable evidence of domestic violence or child abuse against a party or a child; or

(B) The disclosure of information concerning the whereabouts of the party or the child could be harmful to the party or the child; and

(5) In cases where the Secretary of the U.S. Department of Health and Human Services ("Department") has informed the Superior Court that the Department has been notified that there is reasonable evidence of domestic violence or child abuse, requirements to determine whether disclosure of information concerning a party's or child's whereabouts to any other person would be harmful to a party or the child, and if so, to prohibit the disclosure.

(Apr. 3, 2001, D.C. Law 13-269, § 106(i), 48 DCR 1270.)

**Cross references.** — Superior court, family division, exclusive jurisdiction, see § 11-1101.

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 5(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) addition of section, see § 5(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 105(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary addition of § 16-925, see § 5(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(k) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(k) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(k) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(k) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment

Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary addition of § 16-925, see § 105(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of § 16-925 1981 Ed., see § 105(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of § 16-925 1981 Ed., see § 105(k) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of § 16-925 1981 Ed., see § 105(k) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 105(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 106(i) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 13-207.** — For D.C. Law 13-207, see notes following § 16-901.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

CHAPTER 10. PROCEEDINGS REGARDING INTRAFAMILY OFFENSES.

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*Subchapter I. Intrafamily Proceedings Generally.*

§ 16-1001. Definitions.

For the purposes of this subchapter, the term:

(1) "Attorney General" means the Attorney General for the District of Columbia.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Custodian" shall have the meaning as provided in § 16-2301(12).

(4) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5) "Domestic Violence Unit" means any subdivision of the court designated by court rule, or by order of the Chief Judge of the court, to hear proceedings under this subchapter.

(6) "Interpersonal violence" means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person:

(A) With whom the offender shares or has shared a mutual residence; or

(B) Who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with another person who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with the offender.

(7) "Intimate partner violence" means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person:



- (A) To whom the offender is or was married;
- (B) With whom the offender is or was in a domestic partnership; or
- (C) With whom the offender is or was in a romantic, dating, or sexual relationship.

(8) "Intrafamily offense" means interpersonal, intimate partner, or intrafamily violence.

(9) "Intrafamily violence" means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.

(10) "Judicial officer" means the Chief Judge, an Associate Judge, or a Magistrate Judge of the court.

(11) "Minor" means a person under 18 years of age.

(12) "Petitioner" means any person who alleges, or for whom is alleged, that he or she is the victim of interpersonal, intimate partner, or intrafamily violence, stalking, sexual assault, or sexual abuse.

(13) "Respondent" means any person 12 years of age or older against whom a petition for civil protection is filed under this subchapter.

(July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 2, 29 DCR 3131; Apr. 30, 1991, D.C. Law 8-261, § 2(c)(1), 37 DCR 5001; Mar. 21, 1995, D.C. Law 10-237, § 2(a), 42 DCR 36; Mar. 24, 1998, D.C. Law 12-81, § 10(i), 45 DCR 745; Apr. 24, 2007, D.C. Law 16-306, § 206(a), 53 DCR 8610; Dec. 5, 2008, D.C. Law 17-281, § 107(a), 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(2), 56 DCR 1338.)

**Prior Codifications.** — 1981 Ed., § 16-1001.

1973 Ed., § 16-1001.

**Effect of amendments.** — D.C. Law 16-306 rewrote par. (5).

D.C. Law 17-281 redesignated existing pars. (1) to (6) as pars. (2) to (7); and added par. (1).

D.C. Law 17-368 rewrote the section.

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 206(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 206(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 206(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 206(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

**Legislative history of Law 4-144.** — Law 4-144, the "Proceedings Regarding Intrafamily

Offenses Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-212 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-261.** — For legislative history of D.C. Law 8-261, see Historical and Statutory Notes following § 16-1031.

**Legislative history of Law 10-237.** — Law 10-237, the "Domestic Violence in Romantic Relationships Act of 1994," was introduced in Council and assigned Bill No. 10-477, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-380 and transmitted to both Houses of Congress for its review. D.C. Law 10-237 became effective on March 21, 1995.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 16-306.** — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to

both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

**Legislative history of Law 17-281.** — Law 17-281, the “Animal Protection Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-89 which was referred to the Committees on Health and Public Safety and Judiciary. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-493 and transmitted to both Houses of Congress for its review. D.C. Law 17-281 became effective on December 5, 2008.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## CASE NOTES

### ANALYSIS

Discretion of court.  
In general.  
Jurisdiction.  
Level of violence.  
Obligation to obey order.  
Purpose.  
Remand.  
Review.  
Sufficiency of evidence.  
Unlawful entry.

### Discretion of court.

Trial judge’s decision to enter civil protection order (CPO) against ex-girlfriend under Intrafamily Offense Act, pursuant to ex-boyfriend’s petition for such, was abuse of discretion; evidence showed that ex-boyfriend was the aggressor and violently assaulted ex-girlfriend, judge’s reason for granting the CPO against ex-girlfriend, that her own behavior brought on ex-boyfriend’s assaultive behavior, was improper, and while ex-girlfriend failed to leave ex-boyfriend’s apartment after ex-boyfriend had invited her to attend a party there, such did not pose any actual or threatened danger to ex-boyfriend. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

Trial judge did not abuse his discretion, in hearing on mutual petitions for civil protection orders (CPO’s) filed by ex-girlfriend and ex-boyfriend under the Intrafamily Offense Act, by taking judicial notice of factual findings from ex-boyfriend’s criminal simple assault trial, which judge also presided over; criminal assault trial involved same parties and incident that was involved in CPO hearing. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

Trial judge did not abuse his discretion, in hearing on mutual petitions for civil protection orders (CPO’s) filed by ex-girlfriend and ex-boyfriend pursuant to Intrafamily Offense Act,

by sua sponte raising and allowing ex-boyfriend to proceed on a theory of unlawful entry, even though such theory was not originally raised in his petition; ex-girlfriend suffered no prejudice by judge’s action, in that record showed that the parties discussed the unlawful entry allegation at an earlier hearing, and ex-girlfriend conceded that she was prepared to proceed. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

### In general.

“Intra-family offense” within 1970 statute cannot apply to offenses by niece against aunt unless they share mutual residence. D.C. Code § 16-1001(1). *United States v. Harrison*, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

Under District of Columbia law, even assuming arguendo that defendant sought a civil protection order (CPO) against plaintiff partly out of a dislike for plaintiff and a desire to harm him, defendant’s initiation of the CPO proceeding was not an “abuse of process,” where defendant sought the CPO in part to compel plaintiff to obtain psychiatric and substance abuse counseling, which was an entirely proper use of the CPO process. *Rogers v. Johnson-Norman*, 466 F.Supp.2d 162, 2006 U.S. Dist. LEXIS 91637 (2006).

Civil protection order (CPO) was available to petitioner who alleged sexual assault, even though petitioner had no interpersonal, intimate partner, or intrafamily relationship with alleged offender, who was an acquaintance and a friend of her ex-boyfriend. *A.R. v. F.C.*, 33 A.3d 403, 2011 D.C. App. LEXIS 693 (2011).

Alleged conduct of petitioner’s former lover, in defaming petitioner, did not constitute a crime, for purposes of Intrafamily Offenses Act, which authorized issuance of civil protection order (CPO) if there was good cause to believe the defendant committed or was threatening to



commit an act punishable as a criminal offense. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Petition for civil protection order (CPO) met requirement, for stating a claim under Intrafamily Offenses Act for issuance of CPO, of alleging that petitioner's former lover had committed a criminal offense against petitioner; petitioner fairly alleged that the former lover had stalked petitioner by making repeated, abusive, and threatening telephone calls to petitioner that were intended to frighten, torment, and annoy petitioner for the purpose of interfering with his personal and professional life. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The Intrafamily Offenses Act, which authorizes issuance of a civil protection order (CPO) if there is good cause to believe the defendant committed or is threatening to commit an act punishable as a criminal offense, does not require that the act involve abuse or violence. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The Intrafamily Offenses Act, which authorizes the issuance of civil protection orders (CPO), does not authorize the issuance of permanent injunctions. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The Intrafamily Offenses Act, which authorizes issuance of civil protection orders (CPO), should be construed so as to avoid serious doubts as to its constitutionality. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The paramount consideration concerning the Intrafamily Offenses Act, which authorizes issuance of civil protection orders (CPO), is that it is remedial, and the Act must be liberally construed in furtherance of its remedial purpose. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Notification of intrafamily offense given by United States Attorney to Director of Social Services was statutorily sufficient, even though couple's child was not mentioned; term "ex-boyfriend" fell within definition of people with whom complaining witness had had a "romantic relationship" under statute requiring notification. D.C. Code 1981, §§ 16-1001(5)(B), 16-1002. *Hayes v. United States*, 707 A.2d 59, 1998 D.C. App. LEXIS 43 (1998).

Statute defining "intrafamily offense" which may provide basis for civil protection order, is not unconstitutionally vague where statute clearly proscribes criminal conduct by one party against another when both parties share or shared a residence and are involved in an intimate relationship. D.C. Code 1981, § 16-1001(5)(A). *McKnight v. Scott*, 665 A.2d 973, 1995 D.C. App. LEXIS 203 (1995).

Intimate relationship existed between petitioner for civil protection order and her ex-fiance where petitioner alleged the two had an intimate relationship, they were engaged to be married, and they shared the same residence, and, thus, trial court had subject matter jurisdiction over petition. D.C. Code 1981, § 16-1001(5)(A). *McKnight v. Scott*, 665 A.2d 973, 1995 D.C. App. LEXIS 203 (1995).

Intrafamily Offenses Act is remedial statute which should be liberally construed for benefit of class it is intended to protect. D.C. Code 1981, § 16-1001 et seq. *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

Intrafamily Offenses Act must be liberally construed in furtherance of its remedial purpose. D.C. Code 1981, § 16-1001 et seq. *Cruz-Foster v. Foster*, 597 A.2d 927, 1991 D.C. App. LEXIS 286 (1991).

Evidence supported finding that complainant did not have "intimate relationship" with household member within meaning of statute regarding intrafamily offenses, and thus that complainant was not entitled to civil protection order against household member after he had allegedly beaten her. D.C. Code 1981, §§ 16-1001(5)(B), 16-1005(c). *Sandoval v. Mendez*, 521 A.2d 1168, 1987 D.C. App. LEXIS 299 (1987).

Government was not required to refer case of defendant charged with unlawful entry into his girlfriend's apartment to director of social services for consideration as intrafamily offense, in view of fact that it was not clear that relationship between defendant and his girlfriend was close enough to come within contemplation of statute governing intrafamily offenses. D.C. Code §§ 16-1001(1)(C), 22-3102. *Jackson v. United States*, 357 A.2d 409, 1976 D.C. App. LEXIS 538 (1976).

Relationship between mother, her assaulted child, and the defendant, who had been living with the mother for about three years at the time of the conduct involved, was close enough to require the government to notify the Director of Social Services of the offenses, but the failure to notify did not compel dismissal of the case on defendant's appeal from his convictions, since it would be inappropriate to permit defense counsel to remain silent as to possible intrafamily treatment of the case and then readily achieve a dismissal on appeal. D.C. Code § 16-1001(1)(C). *Robinson v. United States*, 317 A.2d 508, 1974 D.C. App. LEXIS 397 (1974).

### **Jurisdiction.**

Intrafamily Offenses Act applied to defendant's relationship with his housemate, and thus trial court had jurisdiction to issue civil protection order (CPO) pursuant to the Act that prevented defendant from assaulting, threatening, or harassing housemate; sharing a mutual

residence did not need to coexist with any of the other relationships—kinship, legal custody, marriage, having a child in common, or a romantic relationship—on which an intrafamily offense may be predicated, for it was listed as an alternative to all of them. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

#### **Level of violence.**

Although the level of any violence was not at all extreme, appellate court discerned no error of law in trial court's issuing civil protection order (CPO) against husband; wife stated that husband pushed her while she was holding their five-month-old baby and that husband tried to force her from not leaving the house. *Karim v. Gunn*, 999 A.2d 888, 2010 D.C. App. LEXIS 345 (2010).

#### **Obligation to obey order.**

Defendant was not entitled to attack the validity of civil protection order (CPO) that had been issued against him pursuant to the Intrafamily Offenses Act at trial in which he was charged with criminal contempt of such order, on basis that the CPO was void for want of jurisdiction; even if defendant's relationship with petitioner could not have supported the issuance of a CPO under the Act, defendant was still obligated to obey the court order unless and until it was reversed or vacated, on pain of being found in contempt. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

#### **Purpose.**

The broad remedial purpose of the Intrafamily Offense Act is to protect victims of family abuse from both acts and threats of violence. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

#### **Remand.**

Trial court's verdict finding defendant guilty of criminal contempt for violating the civil protection order (CPO) issued pursuant to Intrafamily Offenses Act that prohibited defendant from assaulting, threatening, or harassing housemate was based on clearly erroneous findings, i.e., that housemate testified and that defendant threatened to kill her, and thus remand was required for trial court to weigh the evidence in record afresh and render a new verdict. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

#### **Review.**

Whether a civil protection order (CPO) issued pursuant to the Intrafamily Offenses Act forbade the acts proved is a question of law, as to which appellate review is de novo. *Shewarega v.*

*Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

In evaluating the sufficiency of the proof to sustain a conviction of criminal contempt for violating a civil protection order (CPO) issued pursuant to the Intrafamily Offenses Act, an appellate court must view the evidence in the light most favorable to sustaining the judgment, and it may not reverse the trial court's factual findings unless they are clearly erroneous or, equivalently, plainly wrong or without evidentiary support. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

#### **Sufficiency of evidence.**

Conviction of criminal contempt for violating a civil protection order (CPO) issued pursuant to the Intrafamily Offenses Act requires proof beyond a reasonable doubt that the defendant willfully disobeyed the CPO. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

Witness's testimony that defendant threatened to have his housemate deported was sufficient to show that defendant willfully disobeyed civil protection order (CPO) issued pursuant to Intrafamily Offenses Act that prohibited defendant from harassing housemate, as required to support conviction of criminal contempt for violating CPO; while defendant claimed that acts of a "harassing" nature must be committed on more than one occasion to violate the Act, the Act could be read as proscribing even a single act of harassment, if that act otherwise satisfied the statutory definition of the offense. *Shewarega v. Yegzaw*, 947 A.2d 47, 2008 D.C. App. LEXIS 214 (2008).

Evidence supported a finding that mother committed an intrafamily offense, as a factor for trial court to consider in determining the care and custody of child; father's wife had filed a petition for a peace order, seeking protection from mother, in a court in Maryland, the court in Maryland found by clear and convincing evidence that mother had committed acts that placed wife in fear of imminent serious bodily harm, and wife was married to a person, specifically father, who had been in a romantic relationship with the offender, specifically mother. *Woods v. Dumas*, 136 WLR 2025 (Super. Ct. 2007).

#### **Unlawful entry.**

Offense of unlawful entry can be categorized as an offense "upon a person" under the Intrafamily Offense Act and, therefore, in some instances can serve as the basis for entry of a civil protection order (CPO); unlawful entry statutes are designed to protect public safety as well as property. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).



## § 16-1002. Complaint of criminal conduct.

A petitioner has a right to seek relief under this subchapter. This right does not depend on the decision of the Attorney General, the United States Attorney for the District of Columbia, or a prosecuting attorney in any jurisdiction to initiate or not to initiate a criminal or delinquency case or on the pendency or termination of a criminal or delinquency case involving the same parties or issues. Testimony of the respondent in any civil proceedings under this subchapter shall be inadmissible as evidence in a criminal trial or delinquency proceeding except in a prosecution for perjury or false statement.

(July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 3, 29 DCR 3131; Mar. 24, 1998, D.C. Law 12-81, § 10(j), 45 DCR 745; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(2), 56 DCR 1338.)

**Prior Codifications.** — 1981 Ed., § 16-1002.

1973 Ed., § 16-1002.

**Effect of amendments.** — D.C. Law 17-368 rewrote the section.

**Legislative history of Law 4-144.** — For legislative history of D.C. Law 4-144, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

### CASE NOTES

#### ANALYSIS

Admissibility of evidence.

Hearing.

In general.

Jurisdiction.

Notification.

Right to counsel.

Sufficiency of evidence.

#### Admissibility of evidence.

In the event that the state's evidence in a criminal prosecution is tainted by the use of a defendant's statutorily immunized testimony at a hearing for a civil protection order (CPO), if the tainted evidence was presented to the grand jury, the indictment will be dismissed, and when tainted evidence is introduced at trial, the defendant is entitled to a new trial; however, dismissal of the indictment or vacation of the conviction is not necessary where the use of the defendant's CPO testimony is found to be harmless beyond a reasonable doubt. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

"Fruits," as used in the statute providing that testimony of a respondent in a proceeding for a civil protection order (CPO) and the "fruits of that testimony" are inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement, encompasses any evidence directly or indirectly derived from the

respondent's CPO hearing testimony. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

#### Hearing.

Government did not make required showing that prosecuting officials were aware of immunity problem arising from assault defendant's testimony in proceedings for civil protective order (CPO), and that they followed reliable procedures for segregating immunized testimony and its fruits from officials pursuing subsequent investigations, where record showed that government did not follow reliable procedures to separate immunized testimony from subsequent investigation and trial preparation; evidence showed that lead investigator in defendant's criminal prosecution attended CPO hearing, and did not show that investigator made no use of defendant's immunized testimony at that hearing. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Defendant was entitled to a hearing on his new-trial claim that defense counsel was ineffective in prosecution for assault and other offenses for not requesting a Kastigar hearing on whether the state's evidence was tainted by any exposure to defendant's statutorily immunized testimony at earlier hearing on victim's petition for a civil protection order (CPO); counsel knew or should have known that victim and

lead detective had been privy to defendant's immunized testimony and that their exposure might taint their forthcoming testimony or other prosecution evidence at trial, and it did not appear that counsel had any tactical reason to forego a Kastigar hearing. *Aiken v. United States*, 956 A.2d 33, 2008 D.C. App. LEXIS 395 (2008).

### In general.

Ultimate control of handling of intrafamily offense is vested in United States Attorney, and only in an extreme case might dismissal be appropriate judicial response to failure to notify Director of Social Services. D.C. Code 1981, § 16-1002. *Hayes v. United States*, 707 A.2d 59, 1998 D.C. App. LEXIS 43 (1998).

Statute of 1970 regarding intrafamily offenses does not give prosecutor unfettered discretion whether to proceed with criminal charges. D.C. Code §§ 16-1001 et seq., 16-1002, 16-1002(b). *United States v. Harrison*, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

Party's prayer for relief is not controlling, and, though defendant sought dismissal of indictment, court could grant appropriate relief in interest of justice, such as by staying criminal proceeding to discern whether referral to Director of Social Services might produce recommendations that would be acceptable to prosecutor, in case possibly appropriate for handling as intrafamily offense. D.C. Code §§ 16-1001 et seq., 16-1002, 16-1002(b). *United States v. Harrison*, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

Intrafamily Offenses Act must be liberally construed in furtherance of its remedial purpose. D.C. Code 1981, § 16-1001 et seq. *Cruz-Foster v. Foster*, 597 A.2d 927, 1991 D.C. App. LEXIS 286 (1991).

### Jurisdiction.

Where defendant was convicted of two offenses, as to one of which Family Division could have taken jurisdiction but prosecutor was erroneously advised that Family Division did not have jurisdiction, conviction for offense as to which Family Division could have taken jurisdiction was reversed, but other conviction was not. D.C. Code §§ 16-1001 et seq., 16-1001(1), 16-1002, 16-1002(b), 16-1006. *United States v. Harrison*, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

### Notification.

When defendant files timely motion seeking dismissal for nonnotification of Director of Social Services by United States Attorney concerning intrafamily offense, proper procedure is for trial court to hold defendant's motion to dismiss in abeyance and direct United States Attorney to notify the Director, but Director is not required to investigate notified offense or

respond to notification. D.C. Code 1981, § 16-1002. *Hayes v. United States*, 707 A.2d 59, 1998 D.C. App. LEXIS 43 (1998).

Notification of intrafamily offense given by United States Attorney to Director of Social Services was statutorily sufficient, even though couple's child was not mentioned; term "ex-boyfriend" fell within definition of people with whom complaining witness had had a "romantic relationship" under statute requiring notification. D.C. Code 1981, §§ 16-1001(5)(B), 16-1002. *Hayes v. United States*, 707 A.2d 59, 1998 D.C. App. LEXIS 43 (1998).

Though notification of the Director of Social Services by the United States Attorney concerning intrafamily offense is mandatory, dismissal of a prosecution for nonnotification is not; proper procedure when defendant files a timely motion seeking dismissal for nonnotification is to hold the motion in abeyance and direct the United States Attorney to notify the Director and to require prompt response from the Director. D.C. Code 1981, § 16-1002; Criminal Rules 12(b), 47-I(c). *McLeod v. United States*, 568 A.2d 1094, 1990 D.C. App. LEXIS 13 (1990).

In prosecution of defendant for taking indecent liberties with a child and for carnal knowledge, involving defendant's stepdaughter and her cousin, there was no abuse of discretion in denying motion to dismiss and in proceeding to trial, though the Director of Social Services had not been notified as required by statute when conduct involves an intrafamily offense, where request for notification came only four days before trial and it was virtually certain that the United States Attorney would pursue criminal prosecution regardless of the Director's response. D.C. Code 1981, § 16-1002. *McLeod v. United States*, 568 A.2d 1094, 1990 D.C. App. LEXIS 13 (1990).

### Right to counsel.

For claims of ineffective assistance of counsel, there is a presumption that a hearing should be held, especially where the allegations of ineffectiveness relate to facts outside the trial record; any question regarding the appropriateness of a hearing should be resolved in favor of holding a hearing. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

### Sufficiency of evidence.

Government met its burden, at hearing on government's alleged use of immunized testimony in assault prosecution, of proving that it identified particular government witness as potential witness prior to defendant's reference to him in immunized testimony, where reference to witness at issue appeared on another witness' intake form antedating defendant's immunized testimony, was referenced in several 911 calls made prior to defendant's immunized



testimony, and made one such call himself. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Government failed to prove, at hearing on government's alleged use of immunized testimony in prosecution for assault and related offenses, that it was aware of witness' history of cocaine abuse and claimed recovery therefrom from a source wholly independent of defendant's immunized testimony at hearing on complainant's petition for civil protective order (CPO), and trial court thus erred in finding testimony of witness at issue to be untainted. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Government failed to prove, at hearing on government's alleged use of immunized testimony in prosecution for assault and related offenses, that complainant's testimony ascribing to defendant a motive for specific threat was derived from source wholly independent of defendant's immunized testimony at hearing on complainant's petition for civil protective order (CPO), where at CPO hearing, complainant did not testify about a threat on date specified, but only about a "call" from defendant, defendant testified under immunity that he had been angry during such call about posters complainant had put up calling for his arrest, and complainant testified at criminal trial that defendant had threatened her about posters. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Government met its burden, at hearing on government's alleged use of immunized testimony in assault prosecution, of proving derivation independent of defendant's immunized testimony at hearing on complainant's petition for civil protective order (CPO) of trial testimony it presented about specific threat made by defendant against complainant, where government's evidence established that it was defendant's un-immunized cross-examination of complainant at CPO hearing, not his immunized testimony, that might have refreshed complainant's memory or focused her attention, and that complainant had told a third party about threat at issue prior to CPO hearing. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Government met its burden, at hearing on government's alleged use of immunized testimony in assault prosecution, of proving by preponderance of the evidence that complainant's testimony in criminal proceedings was not significantly altered as result of her exposure to defendant's immunized testimony at hearing on her petition for civil protective order (CPO),

where government's evidence established that it was defendant's un-immunized cross-examination of complainant at CPO hearing, not his immunized testimony, that might have refreshed complainant's memory or focused her attention as to certain things, and single account arguably affected by defendant's testimony was tangential. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Government met its burden, at hearing on government's alleged use of immunized testimony in assault prosecution, of proving by preponderance of the evidence that defendant's immunized testimony at hearing on complainant's petition for civil protective order (CPO) was not a cause of complainant's appearing and testifying in criminal proceedings, even without benefit of complainant's testimony at hearing; government presented evidence that complainant vigorously prosecuted case against defendant, and attempted to have him arrested, both before and after hearing on her CPO petition, and that defendant engaged in additional criminal conduct against complainant after CPO hearing. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Prosecutor's testimony at hearing on government's alleged use of immunized testimony in assault prosecution, setting forth timing of her interview with complainant and denying that she had been directly informed of defendant's immunized testimony at hearing on complainant's petition for civil protective order (CPO), was insufficient to meet government's burden of proving that it did not make indirect use of immunized testimony, where prosecutor testified that she knew at time of interview that there had been hearing on CPO petition, that she did not attempt to record complainant's proffered testimony prior to hearing, and that she might have requested some information about hearing. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

Investigating officer's uncorroborated denials that she used assault defendant's immunized testimony, to which she was exposed during her attendance at proceedings for civil protective order (CPO), were insufficient to meet government's burden of proving that it did not make direct use at trial of defendant's immunized testimony, especially in light of fact that investigating officer testified that she was not aware that there was anything problematic about her listening to immunized testimony or using what she learned at CPO hearing, and that she took no special steps to ensure that she did not use immunized testimony. *Aiken v. United States*, 30 A.3d 127, 2011 D.C. App. LEXIS 606 (2011).

## § 16-1003. Petition for civil protection.

(a) A petitioner, or a person authorized by this section to act on petitioner's

behalf, may file a petition for civil protection in the Domestic Violence Unit against a respondent who has allegedly committed or threatened to commit one or more criminal offenses against the petitioner; provided, that:

(1) If the petitioner is a minor, the petitioner's parent, guardian, custodian, or other appropriate adult may file a petition for civil protection on the petitioner's behalf;

(2) A minor who is 16 years of age or older may file a petition for civil protection on his or her own behalf;

(3) A minor who is at least 12 but less than 16 years of age and a victim of intimate partner violence may file a petition for civil protection and participate in a hearing to seek a temporary protection order without a parent, guardian, custodian, or other appropriate adult acting on his or her behalf, but, under these circumstances, the court may appoint an attorney for the minor in accordance with section 16-1005(a-1)(3), if necessary, and if doing so will not unduly delay the issuance or denial of a temporary protection order;

(4) A minor who is at least 12 but less than 16 years of age and a victim of interpersonal or intrafamily violence may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf;

(5) A minor who is less than 12 years of age may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf; and

(6) A custodial parent, guardian, or custodian of a minor may not file a petition for civil protection against the minor.

(b) The Attorney General may provide individual legal representation to a petitioner, or person authorized by this section to act on petitioner's behalf, who files a petition in accordance with subsection (a) of this section. Whenever the Attorney General represents a petitioner under subsection (a) of this section, the representation shall continue until the civil protection order terminates or the Attorney General withdraws his or her appearance, whichever is earlier.

(c) If a petitioner is unable to file a petition on his or her own behalf or with the assistance of a parent, guardian, custodian, or other appropriate adult in accordance with subsection (a) of this section, the Attorney General may file a petition for civil protection on the petitioner's behalf at the request of the petitioner, the petitioner's representative, or a government agency. When proceeding on a petition filed under this subsection, the Attorney General represents the interests of the District of Columbia.

(July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 4, 29 DCR 3131; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(2), 56 DCR 1338.)

**Prior Codifications.** — 1981 Ed., § 16-1003.

1973 Ed., § 16-1003.

**Effect of amendments.** — D.C. Law 17-368 rewrote the section.

**Legislative history of Law 4-144.** — For legislative history of D.C. Law 4-144, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 10-237.** — For



legislative history of D.C. Law 10-237, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

### CASE NOTES

#### ANALYSIS

In general.  
Standard of review.

#### In general.

Civil protection order (CPO) was available to petitioner who alleged sexual assault, even though petitioner had no interpersonal, intimate partner, or intrafamily relationship with alleged offender, who was an acquaintance and a friend of her ex-boyfriend. *A.R. v. F.C.*, 33 A.3d 403, 2011 D.C. App. LEXIS 693 (2011).

Remand was required where it was unclear that trial court considered “entire mosaic” of facts before denying former wife’s request that civil protection order (CPO) require former husband to vacate and stay away from their jointly-owned property, located next door to her

current residence in marital home; given court’s findings that husband had violated CPO and there was likelihood of future violence, court’s order requiring husband to vacate marital home, but allowing him to live right next door, seemed inadequate to accomplish broad remedial purpose of Intrafamily Offenses Act, and court appeared to have placed too much weight on husband’s property rights. *Robinson v. Robinson*, 886 A.2d 78, 2005 D.C. App. LEXIS 550 (2005).

#### Standard of review.

An appellate court reviews the trial court’s decision to enter a civil protection order (CPO) under the Intrafamily Offense Act for an abuse of discretion. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

## § 16-1004. Petition; notice; temporary order.

(a) Upon a filing of a petition for civil protection, the Domestic Violence Unit shall set the matter for hearing, consolidating it, where appropriate, with other matters before the court involving members of the same family.

(b)(1) If, upon the filing of a petition under oath, a judicial officer finds that the safety or welfare of the petitioner or a household member is immediately endangered by the respondent, the judicial officer may issue, ex parte, a temporary protection order.

(2) An initial temporary protection order shall not exceed 14 days except, if the last day falls on a Saturday, Sunday, a day observed as a holiday by the court, or a day on which weather or other conditions cause the court to be closed, the temporary protection order shall extend until the end of the next day on which the court is open. The court may extend a temporary protection order in additional 14 day increments, or longer increments with the consent of the parties, as necessary until a hearing on the petition is completed.

(3) If a respondent fails to appear for a hearing on a petition for civil protection after having been served in accordance with the Rules of the Superior Court of the District of Columbia, and a civil protection order is entered in accordance with § 16-1005, the temporary protection order shall remain in effect until the respondent is served with the civil protection order or the civil protection order expires, whichever occurs first.

(c) A temporary protection order issued pursuant to this section shall include a notice explaining that:

(1) If the day on which the temporary protection order is set to expire is a Saturday, Sunday, a day observed as a holiday by the court, or a day on which the weather or other conditions cause the court to be closed, the temporary

protection order shall remain in effect until the end of the next day on which the court is open; and

(2) If the respondent fails to appear for a hearing on a petition for civil protection after having been served, and a civil protection order is entered, the temporary protection order will remain in effect until the respondent is served with the civil protection order or the civil protection order expires, whichever occurs first.

(d) Pursuant to the Rules of the Superior Court of the District of Columbia, the respondent, and in cases where the respondent is a minor, the respondent's custodial parent, guardian, or custodian, shall be served with notice of the hearing and an order to appear, a copy of the petition, and a temporary protection order, if entered. The court may also cause notice to be served on others whose presence at the hearing is necessary to the proper disposition of the matter.

(e) If a minor has filed a petition for civil protection without a parent, guardian, or custodian, and if the minor is residing with a parent, guardian, or custodian, the court shall send a copy of any order issued pursuant to subsection (b)(1) of this section and notice of the hearing to that parent, guardian, or custodian, unless, in the discretion of the court, notification of that parent, guardian, or custodian would be contrary to the best interests of the minor. If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may, in its discretion, send notice to any other parent, guardian, custodian, or other appropriate adult.

(July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 5, 29 DCR 3131; Mar. 2, 2007, D.C. Law 16-204, § 4, 53 DCR 9059; Mar. 25, 2009, D.C. Law 17-353, § 143, 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(2), 56 DCR 1338.)

**Prior Codifications.** — 1981 Ed., § 16-1004.

1973 Ed., § 16-1004.

**Effect of amendments.** — D.C. Law 16-204, in subsec. (d), designated existing text as paragraph (1); in newly designated paragraph (1), substituted "of not more than 14 days duration, subject to extensions as provided in paragraph (2) of this subsection" for "of not more than 14 days duration"; and inserted new paragraphs (2), (3) and (4).

D.C. Law 17-353 validated a previously made technical correction.

D.C. Law 17-368 rewrote the section.

**Legislative history of Law 4-144.** — For legislative history of D.C. Law 4-144, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 16-204.** — Law 16-204, the "Domestic Violence Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-466, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-504 and transmitted to both Houses of Congress for its review. D.C. Law 16-204 became effective on March 2, 2007.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## CASE NOTES

### ANALYSIS

Discretion of court.

In general.

Presumptions and burden of proof.

Review.



Sufficiency of evidence.

### **Discretion of court.**

Trial judge did not abuse his discretion, in hearing on mutual petitions for civil protection orders (CPO's) filed by ex-girlfriend and ex-boyfriend under the Intrafamily Offense Act, by taking judicial notice of factual findings from ex-boyfriend's criminal simple assault trial, which judge also presided over; criminal assault trial involved same parties and incident that was involved in CPO hearing. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

Trial judge did not abuse his discretion, in hearing on mutual petitions for civil protection orders (CPO's) filed by ex-girlfriend and ex-boyfriend pursuant to Intrafamily Offense Act, by sua sponte raising and allowing ex-boyfriend to proceed on a theory of unlawful entry, even though such theory was not originally raised in his petition; ex-girlfriend suffered no prejudice by judge's action, in that record showed that the parties discussed the unlawful entry allegation at an earlier hearing, and ex-girlfriend conceded that she was prepared to proceed. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

Trial judge's decision to enter civil protection order (CPO) against ex-girlfriend under Intrafamily Offense Act, pursuant to ex-boyfriend's petition for such, was abuse of discretion; evidence showed that ex-boyfriend was the aggressor and violently assaulted ex-girlfriend, judge's reason for granting the CPO against ex-girlfriend, that her own behavior brought on ex-boyfriend's assaultive behavior, was improper, and while ex-girlfriend failed to leave ex-boyfriend's apartment after ex-boyfriend had invited her to attend a party there, such did not pose any actual or threatened danger to ex-boyfriend. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

### **In general.**

To establish the elements of a civil protection order violation, the government must present evidence proving beyond a reasonable doubt that defendant engaged in: (1) willful disobedience (2) of a protective court order. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

Since father who had child with teen mother was not party to neglect proceeding involving teen mother and was not given notice of application for stay-away order and opportunity to be heard, trial court never acquired personal jurisdiction over father, and thus, trial court's order directing father to stay away from teen

mother and to have no contact with her was nullity. D.C. Code 1981, § 16-1004(c). In re T.K., 708 A.2d 1012, 1998 D.C. App. LEXIS 76 (1998).

Ex-fiance was properly served, and thus, trial court had jurisdiction over him on petition for civil protection order, although he did not receive anything labeled notice of hearing and order directing appearance, petition and affidavit for civil protection order stated that ex-fiancee asked court that hearing be set and that notice of hearing and order to appear be issued to ex-fiance. D.C. Code 1981, § 16-1004(c); Intrafamily Rule 3. *McKnight v. Scott*, 665 A.2d 973, 1995 D.C. App. LEXIS 203 (1995).

### **Presumptions and burden of proof.**

Since a violation of a temporary protection order is a general intent offense, proof of the intent element only requires proof that the alleged violator intended to commit the actions constituting violation of the court order. *Thomas v. United States*, 934 A.2d 389, 2007 D.C. App. LEXIS 641 (2007).

To establish the elements of a violation of a temporary protection order, the government must present evidence proving beyond a reasonable doubt that defendant engaged in: (1) willful disobedience (2) of a protective court order. *Thomas v. United States*, 934 A.2d 389, 2007 D.C. App. LEXIS 641 (2007).

### **Review.**

Even though temporary protection order (TPO) that prohibited ex-girlfriend from contacting ex-boyfriend by telephone was invalid, ex-girlfriend's conviction for criminal contempt for violating the TPO was not erroneous; while ex-girlfriend claimed that the TPO statute did not allow for the multiple extensions of the TPO against her beyond fourteen days, and TPO statute did provide for TPO's to be valid for only fourteen days when entered after ex parte hearings, the statute was silent as to the conditions and parameters for extending TPO's with the consent of both parties, and in this case, both parties consented. *Murphy v. Okeke*, 951 A.2d 783, 2008 D.C. App. LEXIS 280 (2008).

### **Sufficiency of evidence.**

Evidence that defendant was standing directly in front of complainant following hearing on petition for civil protection order and speaking loudly to her was sufficient to support conviction for violating temporary restraining order prohibiting him from coming within 100 feet of complainant or having contact with her. *Thomas v. United States*, 934 A.2d 389, 2007 D.C. App. LEXIS 641 (2007).

**§ 16-1005. Hearing; evidence; protection order.**

(a) Individuals served with notice in accordance with § 16-1004 shall appear at the hearing.

(a-1)(1) In a case where the Attorney General files the petition on behalf of a petitioner pursuant to § 16-1003(c), the petitioner is not a required party.

(2) In a case where a parent, guardian, custodian, or other appropriate adult files a petition on behalf of a minor petitioner under the age of 12, the minor petitioner is not a required party.

(3) In a hearing under this section, if a parent, guardian, custodian, or other appropriate adult has petitioned for civil protection on behalf of a minor petitioner 12 years of age or older, the court shall consider the expressed wishes of the minor petitioner in deciding whether to issue an order pursuant to this section and in determining the contents of such an order.

(4) If a respondent is a minor, or if the petitioner is a minor and at least 12 years of age, and if the minor is not accompanied by a parent, guardian, custodian, other appropriate adult, or represented by an attorney, the court may appoint an attorney to represent the minor if such an appointment would not unduly delay the issuance or denial of a protection order. The court may promulgate rules for the appointment of attorneys.

(b) Notwithstanding section 14-306, in a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but testimony compelled over a claim of a privilege conferred by such section shall be inadmissible in evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(c) If, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner's animal or an animal in petitioner's household, the judicial officer may issue a protection order that:

(1) Directs the respondent to refrain from committing or threatening to commit criminal offenses against the petitioner and other protected persons;

(2) Requires the respondent to stay away from or have no contact with the petitioner and any other protected persons or locations;

(3) Requires the respondent to participate in psychiatric or medical treatment or appropriate counseling programs;

(4) Directs the respondent to refrain from entering, or to vacate, the dwelling unit of the petitioner when the dwelling is:

(A) Marital property of the parties;

(B) Jointly owned, leased, or rented and occupied by both parties; provided, that joint occupancy shall not be required if the respondent's actions caused the petitioner to relinquish occupancy;

(C) Owned, leased, or rented by the petitioner individually; or

(D) Jointly owned, leased, or rented by the petitioner and a person other than the respondent;

(5) Directs the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the petitioner individually;



- (6) Awards temporary custody of a minor child or children of the parties;
- (7) Provides for visitation rights with appropriate restrictions to protect the safety of the petitioner;
- (8) Awards costs and attorney fees;
- (9) Orders the Metropolitan Police Department to take such action as the judicial officer deems necessary to enforce its orders;
- (10) Directs the respondent to relinquish possession of any firearms;
- (10A) Directs the care, custody, or control of a domestic animal that belongs to petitioner or respondent or lives in his or her household;
- (11) Directs the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or
- (12) Combines 2 or more of the preceding provisions.

(c-1) For the purposes of subsection (c)(6) and (7) of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(d) A protection order issued pursuant to this section shall be effective for such period up to one year as the judicial officer may specify, but the judicial officer may, upon motion of any party to the original proceeding, extend, rescind, or modify the order for good cause shown.

(e) Any final order issued pursuant to this section and any order granting or denying extension, modification, or rescission of such order shall be appealable.

(f) Violation of any temporary or final order issued under this subchapter, or violation in the District of Columbia of any valid foreign protection order, as that term is defined in subchapter IV of this chapter, or respondent's failure to appear as required by subsection (a) of this section, shall be punishable as contempt. Upon conviction, criminal contempt shall be punished by a fine not exceeding \$1,000 or imprisonment for not more than 180 days, or both.

(g) Any person who violates any protection order issued under this subchapter, or any person who violates in the District of Columbia any valid foreign protection order, as that term is defined in subchapter IV of this chapter, shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment for not more than 180 days, or both.

(g-1) Enforcement proceedings under subsections (f) and (g) of this section in which the respondent is a child as defined by § 16-2301(3) shall be governed by subchapter I of Chapter 23 of this title.

(h) For purposes of establishing a violation under subsections (f) and (g) of this section, an oral or written statement made by a person located outside the

District of Columbia to a person located in the District of Columbia by means of telecommunication, mail, or any other method of communication shall be deemed to be made in the District of Columbia.

(i) Orders entered with the consent of the respondent but without an admission that the conduct occurred shall be punishable under subsection (f), (g), or (g-1) of this section.

(July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 6, 29 DCR 3131; Aug. 25, 1994, D.C. Law 10-154, § 2(c), 41 DCR 4870; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36; Mar. 24, 1998, D.C. Law 12-81, § 10(k), 45 DCR 745; Apr. 11, 2003, D.C. Law 14-296, § 2(b), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, §§ 10(a), 54(b), 51 DCR 881; Dec. 5, 2008, D.C. Law 17-281, § 107(b), 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(3), 56 DCR 1338; June 3, 2011, D.C. Law 18-377, § 5, 58 DCR 1174.)

**Cross references.** — Metropolitan police, execution of orders under this section, see § 5-127.04.

**Prior Codifications.** — 1981 Ed., § 16-1005.

1973 Ed., § 16-1005.

**Effect of amendments.** — D.C. Law 14-296 rewrote subsecs. (f) and (g); and added subsecs. (h) and (i).

D.C. Law 15-105, in subsec. (h), substituted “subsections (f) and (g)” for “subsection (g)”; and, in subsec. (i), substituted “subsection (f) or (g) of this section” for “§ 16-1005(f) or (g)”.

D.C. Law 17-281, in subsec. (c), inserted “, or animal cruelty,” in the lead-in language, deleted “or” from the end of par. (10), and added par. (10A).

D.C. Law 17-368 rewrote subsecs. (a) and (c); added subsecs. (a-1) and (g-1); in subsec. (d), substituted “judicial officer” for “Family Division” in two places; in subsec. (f), substituted “or respondent’s failure to appear as required by subsection (a) of this section” for “and respondent’s failure to appear as required by § 16-1004(b)”; and, in subsec. (i), substituted “(f), (g), or (g-1)” for “(f) or (g)”.

D.C. Law 18-377, in the lead-in language of subsec. (c), substituted “criminal offense against the petitioner or against petitioner’s animal or an animal in petitioner’s household,” for “criminal offense against the petitioner”; and added subsec. (c)(10A).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2 of the Domestic Violence Protection Orders Technical Temporary Act of 2003 (D.C. Law 15-48, December 9, 2003, law notification 51 DCR 1783).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2 of Domestic Violence Protection Orders Technical Emergency Act of 2003 (D.C. Act 15-137, July 29, 2003, 50 DCR 6861).

For temporary (90 day) amendment of section, see § 2 of Domestic Violence Protection Orders Technical Congressional Review Emergency Act of 2003 (D.C. Act 15-220, November 7, 2003, 50 DCR 10049).

For temporary (90 day) amendment of section, see § 2 of Domestic Violence Protection Orders Technical Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-328, January 28, 2004, 51 DCR 1597).

For temporary (90 day) amendment of section, see § 505 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 505 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

**Legislative history of Law 4-144.** — For legislative history of D.C. Law 4-144, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 10-154.** — Law 10-154, the “Evidence of Intrafamily Offenses in Child Custody Cases Act of 1994,” was introduced in Council and assigned Bill No. 10-7, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-270 and transmitted to both Houses of Congress for its review. D.C. Law 10-154 became effective on August 25, 1994.

**Legislative history of Law 10-237.** — For legislative history of D.C. Law 10-237, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see His-



torical and Statutory Notes following § 16-1001.

**Legislative history of Law 14-296.** — Law 14-296, the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002”, was introduced in Council and assigned Bill No. 14-212, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-572 and transmitted to both Houses of Congress for its review. D.C. Law 14-296 became effective on April 11, 2003.

**Legislative history of Law 15-105.** — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned

Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

**Legislative history of Law 17-281.** — For Law 17-281, see notes following § 16-1001.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

**Legislative history of Law 18-377.** — For history of Law 18-377, see notes under § 16-711.01.

## CASE NOTES

### ANALYSIS

Consent of victim.  
Contempt.  
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### Consent of victim.

Former girlfriend’s “consent” to contact with defendant, in violation of a civil protection order (CPO), did not provide a valid defense to charge of criminal contempt based on a violation of the CPO; the CPO advised defendant that only a court could change the order, and neither defendant nor his former girlfriend sought a court order modifying or revoking the CPO. In re Shirley, 28 A.3d 506, 2011 D.C. App. LEXIS 307 (2011).

Victim’s consent was not a defense to charge of violating a civil protection order, even though victim and defendant reconciled and lived together after protection order was issued, as relationship subsequently ended and victim effectively revoked any consent when she called the police after defendant tried to approach her at work. Ba v. United States, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

### Contempt.

Victim’s criminal-contempt proceeding against defendant for alleged violations of a civil protective order (CPO) was not barred by defendant’s plea agreement with United States Attorney’s Office, pursuant to which defendant

pleaded guilty to attempted aggravated assault in exchange for agreement by United States not to pursue any charges concerning an incident on a date that CPO was allegedly violated, even though District of Columbia’s Office of Corporation Counsel represented victim during her prosecution of her motion to adjudicate contempt; references to District of Columbia and Corporation Counsel on plea-agreement form were crossed out, victim’s name did not appear on form, and only United States representative, defendant, and defense counsel signed form. In re Robertson, 940 A.2d 1050, 2008 D.C. App. LEXIS 13 (2008), writ of certiorari dismissed by 130 S. Ct. 2184, 176 L. Ed. 2d 1024, 2010 U.S. LEXIS 4169, 78 U.S.L.W. 4428, 22 Fla. L. Weekly Fed. S 366 (U.S. 2010).

Under the intrafamily-offense statute, a criminal-contempt proceeding based on a violation of a civil protective order (CPO) is properly brought in the name of a private person, rather than in the name of the sovereign. In re Robertson, 940 A.2d 1050, 2008 D.C. App. LEXIS 13 (2008), writ of certiorari dismissed by 130 S. Ct. 2184, 176 L. Ed. 2d 1024, 2010 U.S. LEXIS 4169, 78 U.S.L.W. 4428, 22 Fla. L. Weekly Fed. S 366 (U.S. 2010).

Evidence that father violated civil protection order (CPO) prohibiting him from having any contact with his son was sufficient to support trial court’s order finding father in criminal contempt, where CPO stated that father could not initiate contact with son through a third party, and father acknowledged that he was aware of the CPO when he asked son’s attorney to contact son for him about matter unrelated to litigation between the parties. In re Sobin, 934 A.2d 372, 2007 D.C. App. LEXIS 590 (2007), writ of certiorari denied by 555 U.S. 931, 129 S. Ct. 358, 172 L. Ed. 2d 227, 2008 U.S. LEXIS 6336, 77 U.S.L.W. 3206 (2008).

Contempt conviction was supported by evidence that former boyfriend against whom for-

mer girlfriend sought civil protection order (CPO) continued looking at former girlfriend during hearing on CPO application after being directed by judge at least four times not to do so and being warned he would be found in contempt if he persisted in his noncompliance, by the need to continue the hearing as result of that noncompliance, and by trial judge's finding that conduct in question had purpose and effect of inhibiting former girlfriend from testifying freely and truthfully. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

Summary criminal contempt proceeding was not warranted in case in which former boyfriend continued to stare at former girlfriend at hearing on her application for civil protection order (CPO) despite repeated instructions from judge not to do so; judge's interruption of CPO hearing so that he could refer defendant for a competency screening made the contempt adjudication necessarily conditional, and once CPO proceeding was interrupted, any need for immediate action had dissipated. *Fields v. United States*, 793 A.2d 1260, 2002 D.C. App. LEXIS 64 (2002).

Charge against complainant's former boyfriend of contempt for disobeying Civil Protection Order (CPO), subjecting him to sentence of incarceration as punishment, was proceeding for criminal contempt requiring proof of each element of offense beyond reasonable doubt. D.C. Code 1981, § 16-1005; Intrafamily Rule 12(c)(2). *Mabry v. Demery*, 707 A.2d 49, 1998 D.C. App. LEXIS 22 (1998).

In intrafamily contempt proceeding involving civil protection order entered in domestic violence case, husband did not have "fundamental" constitutional right to public prosecutor, and trial court could permit wife's counsel to participate. *Green v. Green*, 642 A.2d 1275, 1994 D.C. App. LEXIS 85 (1994).

Where court imposes sanction for purpose of punishing contemnor for intentional violation of court order, contempt is classified as "criminal contempt"; if conduct constituting contempt occurs out of presence of court, it may be characterized as "indirect" or "constructive" contempt. *Thompson v. Thompson*, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

A private party may constitutionally file and prosecute a criminal contempt motion. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

Respondents against whom contempt petitions are filed are afforded the entire range of protections a contemner has when proceeded against pursuant to the criminal rules, save one—the requirement of a public prosecutor, whether institutional or specially appointed, and such a provision is not constitutionally required in intrafamily cases, and would constitute a serious impediment to the prompt and

efficient processing of intrafamily contempt motions with no obvious nor particularly necessary benefit in terms of fairness accruing to alleged contemnors. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

The procedures associated with the institution of a contempt proceeding in an intrafamily case afford respondent sufficiently specific notice of his allegedly contemptuous conduct. *Castellanos v. Novoa*, 117 WLR 1189 (Super. Ct. 1989).

### Continuance.

Husband, who was himself an attorney, was not entitled to continuance, in mid-trial, in order to retain counsel in civil protection order proceeding; Domestic Violence Rule required that party seeking a continuance file a motion for continuance at least 48 hours in advance of the hearing, husband did not show exceptional and compelling circumstances so as to warrant exception to this time limitation, and because the asserted grounds for the request for continuance were based on an inexcusable misapprehension as to applicable procedural law on the part of husband, who was himself an attorney, the denial of the request was appropriate and, indeed, inevitable. *Karim v. Gunn*, 999 A.2d 888, 2010 D.C. App. LEXIS 345 (2010).

### Evidence.

Evidence was insufficient to support conviction for violating a Civil Protection Order (CPO); CPO was issued in defendant's absence, and government made no effort to prove that defendant had been served with CPO or otherwise had been notified of its prohibitions, and thus, government failed to prove that defendant acted willfully. *Hooks v. United States*, 977 A.2d 938, 2009 D.C. App. LEXIS 344 (2009).

Trial judge should have instructed alleged victim, who married defendant between the incident giving rise to the prosecution and defendant's trial, of her spousal privilege not to testify, in trial of defendant for simple assault, attempted threats and attempted possession of a prohibited weapon; Intrafamily Offenses Act did not render alleged victim's spousal privilege unavailable in a criminal proceeding against defendant. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

Child custody statute and statute governing protection orders do not place a time limit on the consideration of an intrafamily offense, or distinguish between an intrafamily offense committed prior to or after the issuance of an initial custody and visitation order, or require a finding that a new intrafamily offense has been committed, when considering requests for modification of prior court orders; instead, statutes command courts to focus on the best interest of the child principle, and a parent's intrafamily



offense in making decisions about custody and visitation. *Wilkins v. Ferguson*, 928 A.2d 655, 2007 D.C. App. LEXIS 462 (2007).

Evidence was insufficient to support conclusion that defendant willfully violated civil protection order (CPO), as necessary to support conviction for violation of a CPO by failing to complete a Domestic Violence Intervention Program (DVIP); fact that defendant missed three classes did not warrant removal from program under standards described by witness, the only person with whom defendant had any direct dealings, as witness testified that total of four absences was required, and while defendant was shown to have missed enough classes to sustain his removal if standard was as another witness understood it, there was no evidence that this standard was ever communicated to defendant. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

To establish the elements of a criminal violation of a civil protection order (CPO), the government must present evidence proving beyond a reasonable doubt that defendant engaged in: (1) willful disobedience, (2) of a CPO. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

To establish the elements of a civil protection order violation, the government must present evidence proving beyond a reasonable doubt that defendant engaged in: (1) willful disobedience (2) of a protective court order. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

Since violation of a civil protection order is a general intent crime, proof of the intent element only requires a showing that the defendant intended to commit the actions constituting a violation of the court order. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

Evidence was sufficient to support conviction for violating a civil protection order, as it established that defendant willfully violated the order; testimony indicated that victim and defendant reconciled and lived together after protection order was issued, but other evidence established that relationship subsequently ended, and defendant on one occasion stood within at least ten or twelve feet of victim and on another occasion he went to victim's home and spoke with her, which were both violations of the court order. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

Criminal discovery rule dealing with disclosure of witness' prior statements does not apply where complainant is proceeding pro se or is represented by private counsel. Criminal Rule 26.2. *Green v. Green*, 642 A.2d 1275, 1994 D.C. App. LEXIS 85 (1994).

Criminal discovery rule dealing with disclosure of witness' prior statements does not apply in proceedings regarding intrafamily offenses.

Criminal Rule 26.2; Intrafamily Rule 1. *Green v. Green*, 642 A.2d 1275, 1994 D.C. App. LEXIS 85 (1994).

Even if criminal discovery rule regarding disclosure of witness' prior statements applied to intrafamily proceedings, denial of evidence sought pursuant to such rule could not serve as basis for claimed constitutional violation inasmuch as rule has no constitutional dimension. Criminal Rule 26.2. *Green v. Green*, 642 A.2d 1275, 1994 D.C. App. LEXIS 85 (1994).

Right of parent to have visitation with his child cannot be denied on basis of outdated recommendation in predisposition report. D.C. Code 1981, § 16-2319(c)(2)(D). *In re M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

### Factors in granting orders.

Although the level of any violence was not at all extreme, appellate court discerned no error of law in trial court's issuing civil protection order (CPO) against husband; wife stated that husband pushed her while she was holding their five-month-old baby and that husband tried to force her from not leaving the house. *Karim v. Gunn*, 999 A.2d 888, 2010 D.C. App. LEXIS 345 (2010).

The Intrafamily Offenses Act, which authorizes issuance of a civil protection order (CPO) if there is good cause to believe the defendant committed or is threatening to commit an act punishable as a criminal offense, does not require that the act involve abuse or violence. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Petition for civil protection order (CPO) met requirement, for stating a claim under Intrafamily Offenses Act for issuance of CPO, of alleging that petitioner's former lover had committed a criminal offense against petitioner; petitioner fairly alleged that the former lover had stalked petitioner by making repeated, abusive, and threatening telephone calls to petitioner that were intended to frighten, torment, and annoy petitioner for the purpose of interfering with his personal and professional life. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Alleged conduct of petitioner's former lover, in defaming petitioner, did not constitute a crime, for purposes of Intrafamily Offenses Act, which authorized issuance of civil protection order (CPO) if there was good cause to believe the defendant committed or was threatening to commit an act punishable as a criminal offense. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Granting of permanent civil protection order against petitioner's ex-fiance under intrafamily offense statute was not an abuse of discretion where evidence showed ex-fiance assaulted woman, made false statements about her to her employer, telephoned her at home, and left fax

messages at her work. D.C. Code 1981, § 16-1005(c). *McKnight v. Scott*, 665 A.2d 973, 1995 D.C. App. LEXIS 203 (1995).

Husband's incarceration was factor that could and should have been considered by trial court in determining whether to extend civil protection order previously obtained by wife who had been beaten by husband. D.C. Code 1981, § 16-1005(d). *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

Trial court could not rely solely on husband's incarceration in refusing to extend civil protection order previously obtained by wife who had been beaten by husband; husband would not necessarily remain incarcerated through extension expiration date, incarceration would not prevent husband from engaging in conduct, either alone or through others, that would be barred by extension, trial judge should have given further consideration to effect termination of order would have upon child support payments, and husband consented to extension. Intrafamily Rule 11(b); D.C. Code 1981, § 16-1005(d). *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

### Findings.

Criminal contempt prosecution arising from alleged violations of civil protection order (CPO) was for a "petty offense" rather than a serious offense, such that defendant was not constitutionally entitled to jury trial, where maximum statutory penalty was a fine not exceeding \$1,000, or a period of incarceration up to 180 days, and where order that defendant pay \$10,000 to beneficiary of CPO was earmarked as restitution or reimbursement for her medical expenses, arising from altercations with defendant, that were paid by a crime victim compensation fund. In re *Robertson*, 19 A.3d 751, 2011 D.C. App. LEXIS 305 (2011).

Trial court's findings supported its rejection of defendant's claim of self-defense, so as to support conviction for criminal contempt for violating a civil protective order (CPO) based on defendant's act of throwing lye on victim, where trial court found that defendant had convincingly won fight with victim, that victim was bleeding badly on ground, and that defendant had ten seconds to get away but remained there with lye in his hands and threw it on victim. In re *Robertson*, 940 A.2d 1050, 2008 D.C. App. LEXIS 13 (2008), writ of certiorari dismissed by 130 S. Ct. 2184, 176 L. Ed. 2d 1024, 2010 U.S. LEXIS 4169, 78 U.S.L.W. 4428, 22 Fla. L. Weekly Fed. S 366 (U.S. 2010).

While intrafamily proceedings may be relevant in neglect proceeding, their focus is not necessarily same as focus of neglect proceeding, thus, before relying on intrafamily proceeding, trial judge in neglect proceeding must ascertain whether, in light of challenges, there is proper basis for relying on intrafamily findings. D.C.

Code 1981, §§ 16-2319, 16-2320. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Right of father to have visitation with his child could not be denied without consideration of psychiatric evaluation in accordance with civil protection order, which trial judge was advised did not support earlier concerns about father's mental health or alcoholism. D.C. Code 1981, § 16-2319(c)(2)(D). In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court could not reasonably rely, in neglect proceeding which resulted in denial of visitation, on concern expressed in predisposition report that there had been no evaluation of father; by time of disposition proceeding, father had undergone evaluation called for in civil protection order. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial judge in neglect proceeding brought against natural father could not properly ignore psychiatrist's recommendation that both parents needed counseling in view of undisputed evidence that parents did not get along with each other and that, as parents had stipulated, had resulted in harm to their child. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court's failure in neglect proceeding to make independent legal conclusion, based on factual findings, regarding father's visitation rights, rather than relying on previous civil protection order, was error, and the error was not harmless; nature of documentary evidence before trial court was critical, in that there was predisposition report, psychiatric evaluation, and transcript of intrafamily proceeding, and it was impossible to know whether trial court would have denied father any right of visitation with his child under any conditions if court had read psychiatric evaluation and reviewed transcript of intrafamily proceeding. D.C. Code 1981, § 16-2319. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Terse and conclusory statement by trial judge at neglect proceeding brought against natural father without reference to material evidence before him was not sufficient, where father made request for specific finding on his right to visitation. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Neglect statute contemplates that in a neglect proceeding trial judge will make independent determination of proper disposition in best interest of child based, at least, on reading predisposition report. D.C. Code 1981, §§ 16-2319, 16-2320. In re *M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Since order signed by trial court granting civil protection order to petitioner merely stated in conclusory fashion that court found, after a hearing, that there was good cause to believe that petitioner's son had committed an intrafamily offense against petitioner, case had



to be remanded to trial court with instructions to prepare written statement of its findings, based upon hearing already completed. *Thomas v. Thomas*, 477 A.2d 728, 1984 D.C. App. LEXIS 428 (1984).

#### **In general.**

Trial judge has independent responsibility in neglect proceeding to determine best interests of child. D.C. Code 1981, §§ 16-2319, 16-2319(c)(2)(D). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Intrafamily Offenses Act must be liberally construed in furtherance of its remedial purpose. D.C. Code 1981, § 16-1001 et seq. *Cruz-Foster v. Foster*, 597 A.2d 927, 1991 D.C. App. LEXIS 286 (1991).

#### **Notice.**

Defendant was not given sufficient notice as to application of civil protective order (CPO) to his actions in courtroom during CPO proceeding and, thus, could not be convicted of criminal contempt for willfully violating no-contact provision of CPO, even though defendant encountered CPO petitioner and uttered words when he approached bench to retrieve CPO; courtroom itself was shorter than 100 feet required by stay-away provision of CPO, trial court had defendant and petitioner approach bench simultaneously, and trial court instructed defendant and petitioner, in literal violation of CPO, to communicate in courtroom about certain issues through a third party. In re Jones, 898 A.2d 916, 2006 D.C. App. LEXIS 211 (2006).

In the context of a civil protective order (CPO), constitutional due process requires that notice to parties must be of such nature as reasonably to convey the required information. In re Jones, 898 A.2d 916, 2006 D.C. App. LEXIS 211 (2006).

Trial court could not deny continuance in criminal contempt proceeding based on defendant's failure to secure counsel prior to the hearing; although defendant had several weeks notice of the hearing, he was not notified that he was entitled to court-appointed counsel if he could not afford his own or that contempt charge would be treated as criminal rather than civil. U.S. Const. Amend. 6; D.C. Code 1981, §§ 11-2601 to 11-2609, 16-1001 to 16-1006. *Thompson v. Thompson*, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

#### **Orders.**

With respect to a civil protective order (CPO), if a willful violation of the no-contact provision depends on a willful violation of the stay-away provision, the defendant must be on notice that a failure to keep a particular distance away is itself a violation; otherwise, the stay-away basis for the no-contact violation will lack willfulness. In re Jones, 898 A.2d 916, 2006 D.C. App. LEXIS 211 (2006).

The purpose of the proceeding on a motion alleging a civil protection order violation is to protect the moving party, rather than to punish the offender. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

Expiration of civil protection order (CPO) entered under Intrafamily Offenses Act would not have affected subsequent contempt proceedings against alleged abuser, as several orders to show cause and bench warrants were issued for his failure to comply with CPO during effective dates of CPO, and such orders and bench warrants tolled expiration of CPO. D.C. Code 1981, § 16-1005(f). *Adams v. Ferreira*, 741 A.2d 1046, 1999 D.C. App. LEXIS 289 (1999).

Trial court lacked authority to sua sponte extend civil protection order (CPO) entered under Intrafamily Offenses Act, as neither party to original proceeding initiated subsequent proceedings for extension of CPO. D.C. Code 1981, § 16-1005(d). *Adams v. Ferreira*, 741 A.2d 1046, 1999 D.C. App. LEXIS 289 (1999).

Determination of good cause for extension of civil protection order under Intrafamily Offenses Act is committed to sound discretion of trial court which is subject to reversal only upon showing of abuse of that discretion. D.C. Code 1981, § 16-1005(d). *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

If consent of respondent to civil protection order under Intrafamily Offenses Act is voluntary, trial judge ordinarily should issue order when requested. D.C. Code 1981, §§ 16-1001 et seq., 16-1005(d); Intrafamily Rule 11(b). *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

If trial court declines to issue civil protection order freely consented to by respondent under Intrafamily Offenses Act, strong statement of reasons for not issuing order should be set forth. D.C. Code 1981, §§ 16-1001 et seq., 16-1005(d); Intrafamily Rule 11(b). *Maldonado v. Maldonado*, 631 A.2d 40, 1993 D.C. App. LEXIS 227 (1993).

Trial judge in neglect proceeding could not properly rely on terms of civil protection order in absence of examination of challenges raised by natural father to findings underlying the order. D.C. Code 1981, §§ 16-2319, 16-2319(c)(2)(D). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Even if trial judge could properly take civil protection order at face value in neglect proceeding, judge still had to determine whether father's right of visitation should be denied because it would be detrimental to best interest of child. D.C. Code 1981, § 16-2319(c)(2). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court has authority to grant monetary relief as part of civil protection order issued under Intrafamily Offenses Act. D.C. Code 1981, §§ 16-1001 to 16-1006, 16-1005, 16-1005(c)(10). *Powell v. Powell*, 547 A.2d 973, 1988 D.C. App. LEXIS 154 (1988).

### Parties.

Infants were not required to contact child protection government agency in order to establish special relationship between them and agency sufficient to allow infants to recover for agency's negligence in failing to follow up child abuse report and remove them from abusive environment. D.C. Code 1981, § 6-2100 et seq. *Turner v. District of Columbia*, 532 A.2d 662, 1987 D.C. App. LEXIS 475 (1987).

### Review.

Plea agreement with the United States Attorney, under which the government would not pursue any charges concerning one particular incident, did not preclude superior court from vindicating its authority to enforce a civil protection order (CPO) against the defendant by a order of criminal contempt in connection with the same incident; only the United States and the defendant were bound by the plea agreement, and it was not objectively reasonable for the defendant to expect that plea agreement would shield him by taking away the inherent power and authority of the superior court to enforce its CPOs through the sanction of criminal contempt. *In re Robertson*, 19 A.3d 751, 2011 D.C. App. LEXIS 305 (2011).

Criminal contempt action, initiated in the Superior Court, an Article I court under the Constitution of the United States, by the Office of the Attorney General on behalf of alleged victim based on defendant's alleged violation of a civil protection order (CPO), had to be brought in the name and pursuant to the sovereign power of the United States. *In re Robertson*, 19 A.3d 751, 2011 D.C. App. LEXIS 305 (2011).

In his appeal of convictions for simple assault, attempted threats and attempted possession of a prohibited weapon, arising out of incident with alleged victim whom he married prior to his trial, defendant could raise issue of whether trial court's failure to advise alleged victim of her spousal privilege not to testify required a reversal of his convictions; though prosecution argued that defendant's challenge to trial court's failure should be analyzed under the rubric of standing and that defendant lacked standing to raise the issue on appeal, question was one of a statutory violation as it impacted upon the fairness of defendant's trial. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

Error of trial court by failing to instruct alleged victim, who married defendant post-

crime but prior to defendant's trial, of her spousal privilege not to testify, was not harmless error, in trial of defendant for simple assault, attempted threats and attempted possession of a prohibited weapon; though trial record was incomplete, it appeared that alleged victim would have preferred not to testify, that alleged victim suggested that she had falsely testified before the grand jury and feared a prosecution for perjury based on conflicting testimony, that alleged victim only testified because government offered her use immunity, and thus, if court had instructed her on the spousal privilege, it was likely that alleged victim would not have testified, and thus the government would not have been able to impeach the alleged victim with, and convict defendant based on, alleged victim's grand jury testimony. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

Remand was required where it was unclear that trial court considered "entire mosaic" of facts before denying former wife's request that civil protection order (CPO) require former husband to vacate and stay away from their jointly-owned property, located next door to her current residence in marital home; given court's findings that husband had violated CPO and there was likelihood of future violence, court's order requiring husband to vacate marital home, but allowing him to live right next door, seemed inadequate to accomplish broad remedial purpose of Intrafamily Offenses Act, and court appeared to have placed too much weight on husband's property rights. *Robinson v. Robinson*, 886 A.2d 78, 2005 D.C. App. LEXIS 550 (2005).

Appellate court would hear former wife's appeal from trial court's denial of her request that civil protection order (CPO) require former husband to vacate and stay away from their jointly-owned property, even though appeal was moot, where appeal was from order likely to continuously evade review. *Robinson v. Robinson*, 886 A.2d 78, 2005 D.C. App. LEXIS 550 (2005).

Parties' recent order of divorce did not moot former wife's appeal from trial court's denial of her request that civil protection order (CPO) require former husband to vacate and stay away from their jointly-owned property, where divorce order had been appealed, and, as of time of former wife's appeal, former husband was still residing at jointly-owned property. *Robinson v. Robinson*, 886 A.2d 78, 2005 D.C. App. LEXIS 550 (2005).

In cases involving violation of a civil protection order (CPO), in criminal contempt cases and in criminal cases generally, Court of Appeals must view the evidence in the light most favorable to sustaining the judgment. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).



Court of Appeals may not reverse the trial court's findings of a violation of a civil protection order (CPO) unless they are without evidentiary support or plainly wrong. *Davis v. United States*, 834 A.2d 861, 2003 D.C. App. LEXIS 630 (2003).

Court of Appeals may not reverse trial court's findings of civil protection order violation unless they are without evidentiary support or plainly wrong. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

On appeal of a conviction for violation of a civil protection order, Court of Appeals must view the evidence in the light most favorable to sustaining the judgment; however, a question of law is presented as to whether defendant's acts violated the court order, and the trial court's resolution of that question is reviewed *de novo*. *Ba v. United States*, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

After trial court failed in divorce action to address wife's request for civil protective order or other relief, Court of Appeals would remand so trial court could seek clarification from wife as to precise nature of relief requested and could make appropriate findings and conclusions that would enable appellate review if necessary, rather than addressing on the present appeal the question of whether a trial court has the power to issue a permanent stay-away order. D.C. Code 1981, § 16-1005(c, d). *Burwell v. Burwell*, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Court of Appeals would not assume that trial court's failure in divorce action to address wife's request for civil protective order or other relief in oral ruling from bench or written order constituted ruling of denial of relief requested, particularly since it was unclear what relief wife sought from the trial court. D.C. Code 1981, § 16-1005(c, d). *Burwell v. Burwell*, 700 A.2d 219, 1997 D.C. App. LEXIS 213 (1997).

Remand was required where it was unclear from trial judge's opinion whether she had considered "entire mosaic" of circumstances before denying ex-wife's application for extension of civil protection order against ex-husband. D.C. Code 1981, § 16-1001 et seq. *Cruz-Foster v. Foster*, 597 A.2d 927, 1991 D.C. App. LEXIS 286 (1991).

Trial court's error in believing that it lacked authority under Intrafamily Offenses Act to award wife \$1100 monthly to cover child support and rental expenses for house or apartment unknown to husband or to order husband to continue making mortgage payments on family residence and pay for cost of making residence secure against husband's unauthorized return did not require remand; almost two years had passed and award could not retroactively accomplish "effective resolution" of matter of family violence originally before trial court. D.C. Code 1981, §§ 16-1001 to 16-1006,

16-1005, 16-1005(c)(10). *Powell v. Powell*, 547 A.2d 973, 1988 D.C. App. LEXIS 154 (1988).

### **Right to counsel.**

Court of Appeals will uphold a trial court's ruling that a defendant violated a civil protection order (CPO) if the evidence proves beyond a reasonable doubt that the defendant engaged in (1) willful disobedience (2) of a CPO. In re *Jones*, 898 A.2d 916, 2006 D.C. App. LEXIS 211 (2006).

Where father opposing neglect petition was still only a suspect in a criminal investigation of disappearance of, and suspected murder of, children's mother, the Sixth Amendment right to counsel did not come into play. In re *Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother arbitrarily infringed on father's common law and First Amendment right to consult freely with his lawyer, where there was no suggestion of conflict of interest or other impropriety. In re *Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother deprived father of ability to obtain informed legal advice on his Fifth Amendment privilege in neglect proceeding, where there was no showing of any risk of identifiable harm. In re *Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Defendant who faced jail sentence in indirect criminal contempt proceeding arising from violation of Civil Protection Order was entitled to court-appointed counsel. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 11-2601 to 11-2609, 16-1001 to 16-1006. *Thompson v. Thompson*, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

### **Right to jury trial.**

Alleged criminal contempt for violating a civil protective order (CPO) was a petty offense, and thus defendant did not have a Sixth Amendment right to a jury trial on victim's motion to adjudicate contempt; maximum stat-

utory penalty for such contempt was a fine not exceeding \$1,000 or a period of incarceration up to 180 days. In re Robertson, 940 A.2d 1050, 2008 D.C. App. LEXIS 13 (2008), writ of certio-

rari dismissed by 130 S. Ct. 2184, 176 L. Ed. 2d 1024, 2010 U.S. LEXIS 4169, 78 U.S.L.W. 4428, 22 Fla. L. Weekly Fed. S 366 (U.S. 2010).

## § 16-1006. Jurisdiction.

A petitioner may file a petition for protection under this subchapter if:

(1) The petitioner resides, lives, works, or attends school in the District of Columbia:

(2) The petitioner is under the legal custody of a District government agency; or

(3) The underlying offense occurred in the District of Columbia.

(July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 7, 29 DCR 3131; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(4), 56 DCR 1338.)

**Prior Codifications.** — 1981 Ed., § 16-1006.

1973 Ed., § 16-1006.

**Effect of amendments.** — D.C. Law 17-368 rewrote the section, which had read as follows: "The Family Division may dismiss a petition if the matter is not appropriate for disposition in the Family Division."

**Legislative history of Law 4-144.** — For legislative history of D.C. Law 4-144, see Historical and Statutory Notes following § 16-1001.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## CASE NOTES

### In general.

Where defendant was convicted of two offenses, as to one of which Family Division could have taken jurisdiction but prosecutor was erroneously advised that Family Division did not have jurisdiction, conviction for offense as to which Family Division could have taken jurisdiction was reversed, but other conviction was not. D.C. Code §§ 16-1001 et seq., 16-1001(1), 16-1002, 16-1002(b), 16-1006. United States v. Harrison, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

The State was not required to establish that former girlfriend was residing, working, or attending school in district, or that the alleged violations of a civil protection order (CPO) occurred in district, for the court to have jurisdiction to hold defendant in criminal contempt for violating a CPO; statutory geographical limitations applied to the filing of a petition for a CPO, and statutes placed no geographical limitations on where an alleged violation of a CPO issued by the Superior Court must have occurred for the court to have the power to punish contempt of the order. In re Shirley, 28 A.3d 506, 2011 D.C. App. LEXIS 307 (2011).

Trial court could not deny continuance in criminal contempt proceeding based on defendant's failure to secure counsel prior to the

hearing; although defendant had several weeks notice of the hearing, he was not notified that he was entitled to court-appointed counsel if he could not afford his own or that contempt charge would be treated as criminal rather than civil. U.S. Const.Amend. 6; D.C. Code 1981, §§ 11-2601 to 11-2609, 16-1001 to 16-1006. Thompson v. Thompson, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

Trial court has authority to grant monetary relief as part of civil protection order issued under Intrafamily Offenses Act. D.C. Code 1981, §§ 16-1001 to 16-1006, 16-1005, 16-1005(c)(10). Powell v. Powell, 547 A.2d 973, 1988 D.C. App. LEXIS 154 (1988).

Trial court's error in believing that it lacked authority under Intrafamily Offenses Act to award wife \$1100 monthly to cover child support and rental expenses for house or apartment unknown to husband or to order husband to continue making mortgage payments on family residence and pay for cost of making residence secure against husband's unauthorized return did not require remand; almost two years had passed and award could not retroactively accomplish "effective resolution" of matter of family violence originally before trial court. D.C. Code 1981, §§ 16-1001 to 16-1006, 16-1005, 16-1005(c)(10). Powell v. Powell, 547 A.2d 973, 1988 D.C. App. LEXIS 154 (1988).



*Subchapter II. Parental Kidnapping.***§ 16-1021. Definitions.**

For the purposes of this subchapter, the term:

(1) "Child" means a person under the age of 16 years of age.

(2) "District" means the District of Columbia.

(3) "Lawful custodian" means a person who is authorized to have custody by an order of the Superior Court of the District of Columbia or a court of competent jurisdiction of any state, or a person designated by the lawful custodian temporarily to care for the child.

(4) "Relative" means a parent, other ancestor, brother, sister, uncle, or aunt, or one who has been lawful custodian at some prior time.

(May 23, 1986, D.C. Law 6-115, § 2, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(b), 36 DCR 492; Mar. 24, 1998, D.C. Law 12-81, § 10(l), 45 DCR 745.)

**Cross references.** — Custody of children, see § 16-911.

**Prior Codifications.** — 1981 Ed., § 16-1021.

**Legislative history of Law 6-115.** — Law 6-115, the "Parental Kidnapping Prevention Act of 1985," was introduced in Council and assigned Bill No. 6-311, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 11, 1986, and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-150 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-231.** — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1001.

**§ 16-1022. Prohibited acts.**

(a) No parent, or any person acting pursuant to directions from the parent, may intentionally conceal a child from the child's other parent.

(b) No relative, or any person acting pursuant to directions from the relative, who knows that another person is the lawful custodian of a child may:

(1) Abduct, take, or carry away a child with the intent to prevent a lawful custodian from exercising rights to custody of the child;

(2) Abduct, take, or carry away a child from a person with whom the relative has joint custody pursuant to an order, judgment, or decree of any court, with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(3) Having obtained actual physical control of a child for a limited period of time in the exercise of the right to visit with or to be visited by the child or the right of limited custody of the child, pursuant to an order, judgment, or decree of any court, which grants custody of the child to another or jointly with the relative, with intent to harbor, secrete, detain, or conceal the child or to deprive a lawful custodian of the physical custody of the child, keep the child for more than 48 hours after a lawful custodian demands that the child be

returned or makes all reasonable efforts to communicate a demand for the child's return;

(4) Having custody of a child pursuant to an order, judgment, or decree of any court, which grants another person limited rights to custody of the child or the right to visit with or to be visited by the child, conceal, harbor, secrete, or detain the child with intent to deprive the other person of the right of limited custody or visitation;

(5) Conceal, harbor, secrete, or detain the child knowing that physical custody of the child was obtained or retained by another in violation of this subsection with the intent to prevent a lawful custodian from exercising rights to custody to the child;

(6) Act as an aider and abettor, conspirator, or accessory to any of the actions forbidden by this section;

(7) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a child, take or entice the child outside of the District for the purpose of depriving a lawful custodian of physical custody of the child; or

(8) After issuance of a temporary or final order specifying joint custody rights, take or entice a child from the other joint custodian in violation of the custody order.

(May 23, 1986, D.C. Law 6-115, § 3, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(c), 36 DCR 492.)

**Prior Codifications.** — 1981 Ed., § 16-1022.

**Legislative history of Law 6-115.** — For legislative history of D.C. Law 6-115, see Historical and Statutory Notes following § 16-1021.

**Legislative history of Law 7-231.** — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 16-1021.

## § 16-1023. Defense to prosecution; continuous offenses; expenses; jurisdiction.

(a) No person violates this subchapter if the action:

(1) Is taken to protect the child from imminent physical harm;

(2) Is taken by a parent fleeing from imminent physical harm to the parent;

(3) Is consented to by the other parent; or

(4) Is otherwise authorized by law.

(b) If a person violates § 16-1022 of this subchapter, the person may file a petition in the Superior Court of the District of Columbia that:

(1) States that at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child; and

(2) Seeks to establish custody, to transfer custody, or to revise or to clarify the existing custody order; except that if the Superior Court of the District of Columbia does not have jurisdiction over the custody issue, the person shall seek to establish, transfer, revise, or clarify custody in a court of competent jurisdiction.



(c) If a petition is filed as provided in subsection (b) of this section within 5 days of the action taken, exclusive of Saturdays, Sundays, and legal holidays, a finding by the court that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to prosecution under this subchapter.

(d) A law enforcement officer may take a child into protective custody if it reasonably appears to the officer that any person is in violation of this subchapter and unlawfully will flee the District with the child.

(e) A child who has been detained or concealed shall be returned by a law enforcement officer to the lawful custodian or placed in the custody of another entity authorized by law.

(f) The offenses prohibited by this subchapter are continuous in nature and continue for so long as the child is concealed, harbored, secreted, detained, or otherwise unlawfully physically removed from the lawful custodian.

(g) Any expenses incurred by the District in returning the child shall be reimbursed to the District by any person convicted of a violation of this subchapter. Those expenses and costs reasonably incurred by the lawful custodian and child victim as a result of a violation of this subchapter shall be assessed by the court against any person convicted of the violation.

(h) Any violation of this subchapter is punishable in the District, whether the intent to commit the offense is formed within or without the District, if the child was a resident of the District, present in the District at the time of the taking, or is later found in the District.

(May 23, 1986, D.C. Law 6-115, § 4, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(d), 36 DCR 492.)

**Prior Codifications.** — 1981 Ed., § 16-1023.

**Legislative history of Law 6-115.** — For legislative history of D.C. Law 6-115, see Historical and Statutory Notes following § 16-1021.

**Legislative history of Law 7-231.** — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 16-1021.

## CASE NOTES

### In general.

Otherwise criminal act is excused if harm that would have resulted from compliance with the law would have significantly exceeded harm actually resulting from defendant's breach of the law. *Morgan v. Foretich*, 546 A.2d 407, 1988 D.C. App. LEXIS 133 (1988), writ of certiorari denied by 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781, 1989 U.S. LEXIS 117, 57 U.S.L.W. 3452 (1989).

Defense of necessity does not require proof that harm is actually occurring, but only that defendant have reasonable belief that harm is imminent. *Morgan v. Foretich*, 546 A.2d 407, 1988 D.C. App. LEXIS 133 (1988), writ of certiorari denied by 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781, 1989 U.S. LEXIS 117, 57 U.S.L.W. 3452 (1989).

Defense of necessity does not exonerate one who has opportunity to resort to reasonable legal alternative to violating the law. *Morgan v. Foretich*, 546 A.2d 407, 1988 D.C. App. LEXIS 133 (1988), writ of certiorari denied by 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781, 1989 U.S. LEXIS 117, 57 U.S.L.W. 3452 (1989).

Defense of necessity did not apply to mother's contempt of visitation order on ground that violation was necessary to prevent sexual abuse of daughter by father. *Morgan v. Foretich*, 546 A.2d 407, 1988 D.C. App. LEXIS 133 (1988), writ of certiorari denied by 488 U.S. 1007, 109 S. Ct. 790, 102 L. Ed. 2d 781, 1989 U.S. LEXIS 117, 57 U.S.L.W. 3452 (1989).

## § 16-1024. Penalties.

(a) A person who violates any provision of § 16-1022 and who takes the child to a place within the District, or detains or conceals the child within the District of Columbia is guilty of a misdemeanor and on conviction is subject to fine not exceeding \$250 or performance of community service not exceeding 240 hours, or both.

(b) A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:

(1) If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$1,000 or imprisonment for 6 months, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$250, or performance of community service not exceeding 240 hours, or imprisonment not exceeding 30 days, or a combination of all three.

(2) If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment for 1 year, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$500 or imprisonment not exceeding 60 days, or both.

(May 23, 1986, D.C. Law 6-115, § 5, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(e), 36 DCR 492.)

**Prior Codifications.** — 1981 Ed., § 16-1024.

**Legislative history of Law 6-115.** — For legislative history of D.C. Law 6-115, see Historical and Statutory Notes following § 16-1021.

**Legislative history of Law 7-231.** — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 16-1021.

## § 16-1025. Prosecution by Corporation Counsel.

Prosecutions under this subchapter shall be brought in the Superior Court of the District of Columbia in name of the District by the Corporation Counsel.

(May 23, 1986, D.C. Law 6-115, § 6, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(f), 36 DCR 492.)

**Prior Codifications.** — 1981 Ed., § 16-1025.

**Legislative history of Law 6-115.** — For legislative history of D.C. Law 6-115, see Historical and Statutory Notes following § 16-1021.

**Legislative history of Law 7-231.** — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 16-1021.

## § 16-1026. Expungement.

Any parent convicted in the Superior Court of the District of Columbia of



violating any provision of this subchapter with respect to his or her child may apply to the court for an order to expunge from all official records all records relating to the conviction at such time that the parent's youngest child has reached the age of 18 years, provided that the parent has no more than 1 conviction for a violation of this subchapter at the time that the application for expungement is made. Any other person convicted of violating the provisions of this subchapter may apply to the court for an order to expunge all records relating to the conviction 5 years after the conviction, or at such time as the child has reached the age of 18 years, whichever shall later occur, provided that the person has no more than 1 conviction for violating any provision of this subchapter at the time that the application for expungement is made.

(May 23, 1986, D.C. Law 6-115, § 7, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(g), 36 DCR 492.)

**Prior Codifications.** — 1981 Ed., § 16-1026.

**Legislative history of Law 6-115.** — For legislative history of D.C. Law 6-115, see Historical and Statutory Notes following § 16-1021.

**Legislative history of Law 7-231.** — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 16-1021.

### *Subchapter III. Domestic Violence.*

## **§ 16-1031. Arrests.**

(a) A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person:

(1) Committed an intrafamily offense that resulted in physical injury, including physical pain or illness, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or

(2) Committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

(b) The law enforcement officer shall present the person arrested under subsection (a) of this section to the United States Attorney for charging.

(Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001; Mar. 25, 2009, D.C. Law 17-368, § 4(g), 56 DCR 1338.)

**Cross references.** — Arrests without warrant by law enforcement officers, see § 23-581.

**Prior Codifications.** — 1981 Ed., § 16-1031.

**Effect of amendments.** — D.C. Law 17-368, in subsec. (b), deleted “under section 16-1002” following “charging”.

**Legislative history of Law 8-261.** — Law 8-261, the “District of Columbia Prevention of Domestic Violence Amendment Act of 1990,”

was introduced in Council and assigned Bill No. 8-192, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-239 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 17-368.** — For Law 17-368, see notes following § 16-801.

## **§ 16-1032. Records.**

Any law enforcement officer who investigates an intrafamily offense shall

file a written report of the incident with the District of Columbia Metropolitan Police force ("Police force"), including the law enforcement officer's disposition of the case. The Police force shall maintain the written report.

(Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

**Prior Codifications.** — 1981 Ed., § 16-1032. legislative history of D.C. Law 8-261, see Historical and Statutory Notes following § 16-1031.  
**Legislative history of Law 8-261.** — For

### **§ 16-1033. Civil liability.**

A law enforcement officer shall not be civilly liable solely because he or she makes an arrest in good faith and without malice pursuant to this subchapter.

(Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)

**Prior Codifications.** — 1981 Ed., § 16-1032. legislative history of D.C. Law 8-261, see Historical and Statutory Notes following § 16-1031.  
**Legislative history of Law 8-261.** — For

### **§ 16-1034. Training program.**

(a) The Police force shall incorporate in its educational program for new law enforcement officers training in:

- (1) The nature, dimension, and causes of intrafamily offenses;
- (2) The legal rights and remedies available to a victim or perpetrator of an intrafamily offense;
- (3) The services and facilities available to a victim or perpetrator of an intrafamily offense;
- (4) The legal duties imposed on a police officer to enforce the provisions of this subchapter and to offer protection and assistance to a victim of an intrafamily offense; and
- (5) Techniques for handling an intrafamily offense that minimize the likelihood of injury to the officer and promote the safety of the victim.

(b) The training shall stress the importance of enforcing the law against intrafamily offenses. The Police force may:

- (1) Utilize the resources of any law enforcement agency or community organization; and
- (2) Invite any community organization that provides counselling or assistance to victims of intrafamily offenses to help in planning and presenting the training program.

(c) At least 20 hours of basic training in responding to an intrafamily offense shall be required of any new law enforcement officer prior to the law enforcement officer's permanent appointment.

(d) Any currently employed law enforcement officer shall be required to participate in an 8-hour course designed to familiarize the law enforcement officer with the dynamics of intrafamily offenses.

(Apr. 30, 1991, D.C. Law 8-261, § 2(c)(2), 37 DCR 5001.)



**Prior Codifications.** — 1981 Ed., § 16-1034.

**Legislative history of Law 8-261.** — For

legislative history of D.C. Law 8-261, see Historical and Statutory Notes following § 16-1031.

### *Subchapter IV. Interstate Enforcement of Domestic Violence Protection; Uniform Law.*

## § 16-1041. Definitions.

For purposes of this subchapter, the term:

- (1) "District" means the District of Columbia.
- (2) "Foreign protection order" means a protection order issued by a tribunal of another State.
- (3) "Issuing State" means the State whose tribunal issues a protection order.
- (4) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.
- (5) "Protected individual" means an individual protected by a protection order.
- (6) "Protection order" means an injunction or other order, whether temporary or final, issued by a tribunal for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another individual.
- (7) "Respondent" means the individual against whom enforcement of a protection order is sought.
- (8) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "State" includes an Indian tribe or band that has jurisdiction to issue protection orders.
- (9) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — Law 14-296, the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002", was introduced in Council and assigned Bill No. 14-212, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively.

Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-572 and transmitted to both Houses of Congress for its review. D.C. Law 14-296 became effective on April 11, 2003.

**Editor's notes.** — Uniform Law: This section is based upon § 2 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1042. Judicial enforcement of order.

(a) A person authorized by the law of the District to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of the District. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of the District would lack

power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of or for the benefit of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of the District for the enforcement of protection orders.

(b) Except for cases brought under § 16-1005(f) or (g), a tribunal of the District may not enforce a foreign protection order issued by a tribunal of a State that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of the District shall enforce the provisions of a valid foreign protection order that governs custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing State.

(d) A foreign protection order is valid if it:

- (1) Identifies the protected individual and the respondent;
- (2) Is currently in effect or was in effect at the time of the violation;
- (3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing State; and

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of the District may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing State; and

(2) The tribunal of the issuing State made specific findings in favor of the respondent.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This section is based upon § 3 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1043. Nonjudicial enforcement of order.

(a) A law enforcement officer, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of the District. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the



purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) Registration or filing of an order in the District is not required for the enforcement of a valid foreign protection order pursuant to this subchapter.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1044. Registration of order.

(a) The Superior Court of the District of Columbia is authorized, subject to appropriations, to create a registry in the District of Columbia for foreign protection orders and protection orders issued in the District of Columbia.

(b) Any individual may register a foreign protection order in the District. To register a foreign protection order, an individual shall:

(1) Present a certified copy of the order to the Superior Court; and

(2) File an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) When a registry is created pursuant to subsection (a) of this section, upon receipt of a foreign protection order, the Superior Court shall register the order in accordance with this section. After the order is registered, the Superior Court shall furnish to the individual registering the order a certified copy of the registered order. The Superior Court shall not notify or require notification of the respondent that the protection order has been registered in the District unless requested to do so by the party protected by the order.

(d) The Superior Court shall register an order upon presentation of a copy of a protection order that has been certified by the issuing State. A registered foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of the District.

(e) A foreign protection order registered under this subchapter may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order, nor may a fee be charged for service of a foreign order in the District of Columbia.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 5 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1045. Immunity.

The District and its officers and employees, a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for conduct arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the conduct was done in good faith in an effort to comply with this subchapter.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 6 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1046. Other remedies.

A protected individual who pursues remedies under this subchapter is not precluded from pursuing other legal or equitable remedies against the respondent.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 7 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1047. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 8 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

## § 16-1048. Transitional provision.

This subchapter applies to protection orders issued before the effective date of this subchapter and to continuing actions for enforcement of foreign protection orders commenced before the effective date of this subchapter. A request for enforcement of a foreign protection order made on or after the effective date of this subchapter for violations of a foreign protection order occurring before the effective date of this subchapter is governed by this subchapter.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1005.

**References in text.** — The “effective date of this subchapter”, referred to in text, is April 11,



2003, which is the effective date of D.C. Law 14-296.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 11 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

### *Subchapter V. Domestic Violence Fatality Review Board.*

## **§ 16-1051. Definitions.**

For purposes of this subchapter, the term:

(1) “Board” means the Domestic Violence Fatality Review Board.

(2) “District” means the District of Columbia.

(3) “Domestic violence fatality” means:

(A) A homicide under any of the following circumstances:

(i) The alleged perpetrator and victim resided together at any time;

(ii) The alleged perpetrator and victim have a child in common;

(iii) The alleged perpetrator and victim were married, divorced, separated, or had a romantic relationship, not necessarily including a sexual relationship;

(iv) The alleged perpetrator is or was married to, divorced, or separated from, or in a romantic relationship, not necessarily including a sexual relationship, with a person who is or was married to, divorced, or separated from, or in a romantic relationship, not necessarily including a sexual relationship, with the victim;

(v) The alleged perpetrator had been stalking the victim;

(vi) The victim filed a petition for a protective order against the alleged perpetrator at any time;

(vii) The victim resided in the same household, was present at the workplace of, was in proximity of, or was related by blood or affinity to a person who experienced or was threatened with domestic violence by the alleged perpetrator; or

(viii) The victim or the perpetrator was or is a child, parent, sibling, grandparent, aunt, uncle, or cousin of a person in a relationship that is described within this subsection.

(B) A suicide of an individual where there were implications that the individual was the victim of domestic violence prior to his or her suicide, including the following circumstances:

(i) The victim had applied for or received a protection order within the 2-year period preceding the suicide;

(ii) The victim had undergone counseling or treatment as a result of being the victim of domestic violence within the 2-year period preceding the suicide; or

(iii) The victim had reported to the police that he or she had been the victim of domestic violence within the 2-year period preceding the suicide.

(4) “Protection order” means an injunction or other order, whether temporary or final, issued by a tribunal for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another individual.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

### § 16-1052. Establishment and purpose.

(a) There is established, as part of the District of Columbia government, a Domestic Violence Fatality Review Board. Facilities and other administrative support may be provided in a specific department or through the Board, as determined by the Mayor.

(b) The purpose of the Board is to prevent domestic violence fatalities by improving the response of individuals, the community, and government agencies to domestic violence.

(c) The Board shall:

(1) Identify and characterize the scope and nature of domestic violence fatalities in the District of Columbia;

(2) Describe and record any trends, data, or patterns that are observed surrounding domestic violence fatalities;

(3) Examine past events and circumstances surrounding domestic violence fatalities by reviewing records and other pertinent documents of public and private agencies responsible for investigating deaths or treating victims;

(4) Develop and revise, as necessary, operating rules and procedures for review of domestic violence fatalities, including identification of cases to be reviewed, coordination among the agencies and professionals involved, and improvement of the identification, data collection, and record keeping of the causes of domestic violence fatalities;

(5) Recommend systemic improvements to promote improved and integrated public and private systems serving victims of domestic violence;

(6) Recommend components for prevention and education programs; and

(7) Recommend training to improve the identification and investigation of domestic violence fatalities.

(d) The Board shall prepare an annual report of findings, recommendations, and steps taken to implement recommendations. The report shall not contain information identifying any victim of domestic violence, or the victim's family members, or an alleged or suspected perpetrator of abuse upon a victim. The annual report shall be submitted to the public, the Mayor, and the Council on July 1 of each year, and shall be presented to the Council at a public hearing.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(a) of Domestic Violence Fatality Review Board Emergency Act of 2010 (D.C. Act 18-366, April 5, 2010, 57 DCR 3168).

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

### § 16-1053. Composition of the Board; procedural requirements.

(a) The Mayor shall appoint one representative from each of the following District agencies:



- (1) Metropolitan Police Department;
- (2) Office of the Chief Medical Examiner;
- (3) Office of the Corporation Counsel;
- (4) Department of Corrections;
- (5) Fire and Emergency Medical Services Department;
- (6) Addiction Prevention and Recovery Administration;
- (7) Department of Health;
- (8) Child and Family Services Agency; and
- (9) Mayor's Commission on Violence Against Women.

(b) The Mayor shall appoint, or request the designation of, members from federal, judicial, and private agencies or entities with expertise in domestic violence, to include one representative from each of the following:

- (1) Superior Court of the District of Columbia;
- (2) Office of the United States Attorney for the District of Columbia;
- (3) District of Columbia hospitals;
- (4) University legal clinics;
- (5) Domestic violence shelters; and
- (6) Domestic violence advocacy organizations.

(c) The Mayor, with the advice and consent of the Council, shall appoint 8 community representatives, none of whom shall be employees of the District of Columbia.

(d) Governmental appointees shall serve at the will of the Mayor, or of the federal or judicial body designating their availability for appointment. Community representatives shall serve for 3-year terms.

(e) Vacancies in membership shall be filled in the same manner in which the original appointment was made.

(f) The Board shall select a Chairman according to rules set forth by the Board.

(g) The Board shall establish quorum and other procedural requirements as it considers necessary.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, § 54(a), 51 DCR 881.)

**Effect of amendments.** — D.C. Law 15-105, in the section name line, validated a previously made technical correction.

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Legislative history of Law 15-105.** — For Law 15-105, see notes following § 16-1005.

## § 16-1054. Access to information.

(a) Notwithstanding any other provision of law, immediately upon the request of the Board and as necessary to carry out the Board's purpose and duties, the Board shall be provided, without cost and without authorization of the persons to whom the information or records relate, access to:

(1) All information and records of any District of Columbia agency, or their contractors, including, but not limited to, birth and death certificates, law enforcement investigation data, unexpurgated juvenile and adult criminal records, mental retardation and developmental disabilities records, autopsy

reports, parole and probation information and records, school records, and information records of social services, housing, and health agencies that provided services to the victim, the victim's family, or an alleged perpetrator of domestic violence which led to the death of the victim;

(2) All information and records of any private health-care providers located in the District of Columbia, including providers of mental health services who provided services to the deceased victim, the deceased victim's family, or the alleged perpetrator of domestic violence which led to the death of the victim;

(3) All information and records of any private child welfare agency, educational facility or institution, or child care provider doing business in the District of Columbia who provided services to the victim, the victim's immediate family, or the alleged perpetrator of domestic violence which led to the death of the victim; and

(4) Information made confidential by §§ 4-1302.03, 4-1303.06, 7-219, 7-1203.02, 7-1305.12, 16-2331, 16-2332, 16-2333, 16-2335, and 31-3426.

(b) The Board shall have the authority to seek information from entities and agencies outside the District of Columbia by any legal means.

(c) Notwithstanding subsection (a)(1) of this section, information and records concerning a current law enforcement investigation may be withheld, at the discretion of the investigating authority, if disclosure of the information would compromise a criminal investigation or prosecution.

(d) If information or records are withheld under subsection (c) of this section, a report on the status of the investigation shall be submitted to the Board by the investigating authority every 3 months until the earliest of the following events occurs:

(1) The investigation is concluded;

(2) The investigating authority determines that providing the information will no longer compromise the investigation; or

(3) The information or records are provided to the Board.

(e) All records and information obtained by the Board pursuant to subsections (a) and (b) of this section pertaining to the deceased victim or any other individual shall be destroyed immediately following the preparation of the Board's annual report. All additional information concerning a review, except statistical data, shall be destroyed by the Board one year after publication of the Board's annual report.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, § 10(b), 51 DCR 881.)

**Effect of amendments.** — D.C. Law 15-105, in subsec. (a)(4), validated a previously made technical correction.

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Legislative history of Law 15-105.** — For Law 15-105, see notes following § 16-1005.

## § 16-1055. Subpoena power.

(a) When necessary for the discharge of its duties, the Board shall have the



authority to issue subpoenas to compel witnesses to appear and testify and to produce books, papers, correspondence, memoranda, documents, or other relevant records.

(b) Except as provided in subsection (c) of this section, subpoenas shall be served personally upon the witness or his or her designated agent, not less than 5 business days before the date the witness must appear or the documents must be produced, by one of the following methods, which may be attempted concurrently or successively:

(1) By a special process server, at least 18 years of age, designated by the Board from among the staff of the Board or any of the offices or organizations represented on the Board; provided, that the special process server is not directly involved in the investigation; or

(2) By a special process server, at least 18 years of age, engaged by the Board.

(c) If, after a reasonable attempt, personal service on a witness or witness' agent cannot be obtained, a special process server identified in subsection (b) of this section may serve a subpoena by registered or certified mail not less than 8 business days before the date the witness must appear or the documents must be produced.

(d) If a witness who has been personally summoned neglects or refuses to obey the subpoena issued pursuant to subsection (a) of this section, the Board may report that fact to the Superior Court of the District of Columbia and the court may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the court.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

## **§ 16-1056. Confidentiality of information and proceedings; penalty for unlawful disclosure of information.**

(a) Except as provided in this section, information and records obtained or created by the Board are confidential and not subject to civil discovery or to disclosure pursuant to subchapter II of Chapter 5 of Title 2.

(b) Information and records presented to the Board for review shall not be immune from subpoena, discovery, or prohibited from being introduced into evidence solely because they were presented to or reviewed by the Board if the information and records have been obtained through other sources.

(c) Information required to be reported under §§ 4-1321.02 and 4-1321.03 shall be disclosed by the Board to the Child and Family Services Agency.

(d) An individual who appears before or participates in the Board's review of domestic violence cases shall sign a confidentiality agreement acknowledging that any information provided to the Board is confidential.

(e) Board meetings are closed to the public and are not subject to § 1-207.42.

(f) Information identifying a victim of domestic violence or that person's

family members, or an alleged perpetrator of abuse upon the victim, shall not be disclosed in any report that is available to the public.

(g)(1) Whoever discloses, receives, makes use of, or knowingly permits the use of information concerning a victim or other person in violation of this section shall be subject to a fine of not more than \$1,000.

(2) Violations of this section shall be prosecuted by the Office of the Corporation Counsel in the name of the District of Columbia.

(3) Subject to appropriation for this purpose, any fines collected pursuant to this section shall be used by the Board to fund its activities.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

### § 16-1057. Immunity.

(a) Any health-care provider or any other person or institution providing information to the Board pursuant to this subchapter shall have immunity from liability, administrative, civil, or criminal, that might otherwise be incurred or imposed with respect to the disclosure of information.

(b) If acting in good faith, without malice, and within the parameters of the protocols established by this subchapter, representatives of the Board are immune from civil liability for an activity related to reviews of domestic violence fatalities.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

### § 16-1058. Rules.

The Mayor shall issue rules implementing the provisions of this subchapter. The rules shall require that a subordinate agency director to whom a recommendation is directed by the Board shall respond in writing within 30 days of the issuance of the report containing the recommendations.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320.)

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

### § 16-1059. Sunset. [Repealed].

Repealed.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320; Sept. 24, 2010, D.C. Law 18-223, § 3032, 57 DCR 6242.)

**Cross references.** — Superior Court of the District of Columbia, jurisdiction, see § 11-921.

**Temporary Amendment of Section.** —

For temporary (225 day) amendment of section, see § 1402 of the Fiscal Year 2010 Balanced Budget Support Temporary Act of 2010 (D.C.



Law 18-222, September 24, 2010, law notification 57 DCR 9859).

**Emergency legislation.** — For temporary (90 day) repeal of section, see § 2(b) of Domestic Violence Fatality Review Board Emergency Act of 2010 (D.C. Act 18-366, April 5, 2010, 57 DCR 3168).

For temporary (90 day) amendment of section, see § 1402 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 1402 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) repeal of section, see § 3032 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

**Legislative history of Law 14-296.** — For Law 14-296, see notes following § 16-1041.

**Legislative history of Law 18-223.** — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

**Short title.** — Short title: Section 3031 of D.C. Law 18-223 provided that subtitle D of title III of the act may be cited as the “Domestic Violence Fatality Review Board Act of 2010”.

## CHAPTER 11. EJECTMENT AND OTHER REAL PROPERTY ACTIONS.

*Subchapter I. Ejectment*

Sec.	Sec.
16-1101. Parties defendant; joint tenants and tenants in common.	16-1119. Judgment when improvements and damages are equal.
16-1102. Failure of tenant to give notice to landlord.	16-1120. Election of plaintiff if value of improvements exceeds damages.
16-1103. Contents of complaint; adverse possession.	16-1121. Judgment and writ of possession after payment for improvements.
16-1104. Proof necessary.	16-1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.
16-1105. Legal title in mortgagee or trustee; possession.	16-1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.
16-1106. Performance of contract by vendee as precluding vendor from recovery.	16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.
16-1107. Several judgments against defendants occupying distinct parcels.	
16-1108. Recovery of less than is claimed.	
16-1109. Recovery of mesne profits and damages; separate count.	<i>Subchapter II. Proceedings to Discover the Death of a Tenant for Life</i>
16-1110. Recovery, by landlord, of furniture, arrears in rent, and damages; separate counts.	16-1151. Petition by person entitled to claim; form and contents.
16-1111. Separate action for rent or damages.	16-1152. Order to produce life tenant; service of order.
16-1112. Expiration of title pending suit; damages.	16-1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession.
16-1113. Defense of adverse possession; enclosure.	16-1154. Investigation outside the District; report to court; presumption of death; right to possession.
16-1114. Verdict; judgment; costs; future actions.	16-1155. Restoration of property to life tenant.
16-1115. Conclusiveness of final judgment.	16-1156. Recovery of profits by person evicted.
16-1116. Improvements; notice; good faith; directions to jury; measure of damages.	16-1157. Preservation of life tenants' rights if living at time of return.
16-1117. New trial as to assessment.	16-1158. Persons holding over after life estate; damages.
16-1118. Judgment for damages in excess of improvements.	

*Subchapter I. Ejectment.***§ 16-1101. Parties defendant; joint tenants and tenants in common.**

(a) A civil action based upon a cause of action in ejectment, may be brought against:

- (1) the person actually occupying the premises claimed, either in person or by tenant; or
- (2) both the claimant and his tenant, or other occupant claiming under him; or
- (3) if the premises are not actually occupied, a person exercising acts of ownership thereon adversely to the plaintiff.

When a lessee is made a defendant at the suit of a party claiming against the title of the lessee's landlord, the landlord may appear and be made a party defendant in the place of his lessee.



Any person claiming to be in possession may, on motion, be admitted to defend the action.

(b) Joint tenants shall sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any number of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests.

(Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1101. 1973 Ed., § 16-1101.

### CASE NOTES

#### **In general.**

New owners, who prevailed in a suit for possession, were not entitled to a money judgment for past-due rent from occupants of the recently purchased premises, who were tenants of the former owner, since there was no contractual landlord-tenant relationship between owners and occupants which obligated occupants to pay rent or entitled owners to claim that rent was owed to them. D.C. Code 1981, § 45-1411. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

Although occupants of recently purchased premises could not be held liable to new owners for past-due rent, they could be found liable for damages in a separate action for the use and enjoyment of new owners' townhouse; however, those damages were not "rent," and therefore the summary proceeding in landlord and tenant branch was not proper vehicle for recovery of such damages. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

### **§ 16-1102. Failure of tenant to give notice to landlord.**

If a tenant, on whom a complaint in ejectment is served, fails to give notice thereof, without delay, to his landlord or the agent of the landlord, he shall forfeit and pay to the landlord the value of three years' full rent of the premises, to be recovered by a civil action.

(Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1102. 1973 Ed., § 16-1102.

### **§ 16-1103. Contents of complaint; adverse possession.**

In his complaint in ejectment, the plaintiff shall:

- (1) describe the premises claimed with reasonable certainty; and
- (2) set forth distinctly the nature and quantity of the estate claimed by him in the premises.

It is sufficient for the plaintiff to state, in addition, that:

- (1) he was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession thereof, and withholds the possession of the premises from the plaintiff, or wrongfully detains possession; or
- (2) the defendant is wrongfully exercising acts of ownership over the premises.

However, except as provided by this chapter, acts of ownership do not

**§ 16-1104** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations.

(Dec. 23, 1963, 77 Stat. 564, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1103. 1973 Ed., § 16-1103.

**CASE NOTES**

**In general.**

As property owner, who built retaining wall that encroached on adjacent property, could not avail himself of betterment statute, elements of adjoining property owner's ejectment action were established sufficiently for court to re-

quire that encroaching part of retaining wall be removed by property owner at his expense. *Dorchester Associates LLC, v. Roudi Djabbarzadeh*, 134 WLR 2583 (Super. Ct. 2006).

**§ 16-1104. Proof necessary.**

(a) Except as provided by subsection (b) of this section, in an action of ejectment it is sufficient to entitle the plaintiff to relief to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed, and that the defendant is:

(1) in possession of the premises, and is holding adversely to the plaintiff;  
or

(2) exercising acts of ownership over the premises, adversely to the plaintiff.

(b) In an action pursuant to this chapter by one or more joint tenants or tenants in common against their cotenants, the plaintiff shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1104. 1973 Ed., § 16-1104.

**§ 16-1105. Legal title in mortgagee or trustee; possession.**

It is not a bar to the plaintiff's recovery in an action of ejectment that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt, unless the mortgagee or trustee, or those claiming under him, has taken possession of the premises, or unless the defendant claims under the mortgagor or grantor in the deed of trust.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1105. 1973 Ed., § 16-1105.



### **§ 16-1106. Performance of contract by vendee as precluding vendor from recovery.**

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree for a conveyance of the legal title, without condition, the vendor may not recover the property from the vendee.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1106. 1973 Ed., § 16-1106.  
1106.

### **§ 16-1107. Several judgments against defendants occupying distinct parcels.**

When it appears on the trial in an action of ejectment that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1107. 1973 Ed., § 16-1107.  
1107.

### **§ 16-1108. Recovery of less than is claimed.**

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1108. 1973 Ed., § 16-1108.  
1108.

### **§ 16-1109. Recovery of mesne profits and damages; separate count.**

(a) The plaintiff may embody in his complaint, in a separate count, a claim for the:

(1) mesne profits received by the defendant from the property sued for; or  
(2) clear value of the use and occupation of the property sued for —  
extending to the time of the verdict, and also damages for waste or injury to the premises during that period.

(b) If the jury find for the plaintiff, they may, at the same time, find and assess the mesne profits, or the value of the use and occupation and the amount of damages, specified by subsection (a) of this section. Except in the case provided for by § 16-1116, there shall be rendered, besides a judgment for the recovery of the property, a judgment against the defendant for the amount so found by the jury.

(Dec. 23, 1963, 77 Stat. 565, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(m), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1109.

1973 Ed., § 16-1109.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

#### CASE NOTES

**In general.**

The traditional civil action in ejectment was appellants’ alternative to summary proceedings in the Landlord and Tenant Branch. Appellants bringing such a suit clearly would have been

authorized, by express statutory provision, to add a damages claim for the use and occupation value of the property. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

### **§ 16-1110. Recovery, by landlord, of furniture, arrears in rent, and damages; separate counts.**

(a) In an action in ejectment against his tenant, a landlord may embody in his complaint, in separate counts, claims for:

- (1) furniture, if leased with the realty;
- (2) arrears of rent due at the termination of the tenancy;
- (3) double rent in cases authorized by this Code from the termination of the tenancy to the verdict for possession; and

(4) damages for waste or injury to the premises or furniture during the defendant’s occupancy of the premises and before commencement of the action.

(b) If the jury find for the landlord, they may, at the same time, find the amounts due for arrears of rent and for double rent and for damages, as provided by subsection (a) of this section, and judgment shall be rendered accordingly.

(Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1110. 1973 Ed., § 16-1110.

### **§ 16-1111. Separate action for rent or damages.**

The plaintiff in ejectment is not required to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so does not prevent him from bringing his action for rent or damages separately.

(Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1111. 1973 Ed., § 16-1111.



## CASE NOTES

**In general.**

Where no accounting was requested and claim for money judgment was waived and only issue before landlord and tenant division was that of possession, landlord and tenant division

had jurisdiction to issue order for possession. D.C. Code § 16-1111. *Watwood v. Yambrusic*, 389 A.2d 1362, 1978 D.C. App. LEXIS 400 (1978).

**§ 16-1112. Expiration of title pending suit; damages.**

If the title of the plaintiff in ejectment expires after the commencement of his action but before the trial, and but for the expiration he would have been entitled to recover, the verdict shall find the facts, and the plaintiff may recover his damages sustained by the wrongful withholding of the possession.

(Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(n), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1112.

1973 Ed., § 16-1112.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1109.

**§ 16-1113. Defense of adverse possession; enclosure.**

In an action to recover vacant and unimproved lots of ground it is not necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been enclosed; but if it appears that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the property and were the only persons who had exercised control over the property for a period of fifteen years before the bringing of the action, the facts shall be the equivalent of possession by actual enclosure.

(Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1113.

1973 Ed., § 16-1113.

**§ 16-1114. Verdict; judgment; costs; future actions.**

(a) In an action of ejectment, if the plaintiff's title is established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the complaint, as the case may be. If the plaintiff fails to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be. The verdict may be for the plaintiff as to part and for the defendant as to other part thereof. Except as provided by this chapter, judgment shall be rendered according to the verdict.

(b) When it appears on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, the verdict of the jury shall be that the defendant is not guilty. Thereupon, judgment shall be rendered in favor of the

defendant against the plaintiff for the costs of the action, but the judgment is not a bar to a future action by the plaintiff against the defendant for the recovery of the property.

(Dec. 23, 1963, 77 Stat. 566, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1114. 1973 Ed., § 16-1114.

**§ 16-1115. Conclusiveness of final judgment.**

A final judgment rendered in an action of ejectment is conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1115. 1973 Ed., § 16-1115.

**§ 16-1116. Improvements; notice; good faith; directions to jury; measure of damages.**

In an action of ejectment, at any time before the trial, the defendant may give notice that if the verdict of the jury is in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on the property, which were begun in good faith before the commencement of the action. The court shall then direct the jury, in case they find in favor of the plaintiff's title and also find that the permanent improvements were made by the defendant, or those under whom he claims, under the circumstances described in this section, to assess the:

(1) damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of the improvements, during the whole period of the occupation of the property to the date of the verdict, and any damage done to the property, by waste or otherwise, by the parties during the occupation;

(2) present value of any permanent improvements that may have been placed on the premises by the defendant or those under whom he claims; and

(3) present value of the property of the plaintiff without and exclusive of the improvements.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(o), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1116. 1973 Ed., § 16-1116.  
**Legislative history of Law 12-81.** — For



legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1109.

### CASE NOTES

#### ANALYSIS

Color of title.  
In general.  
Remedies.

#### Color of title.

Whether or not property owner knew retaining wall encroached on adjacent property, any alleged reliance by owner on an incorrect survey was insufficient to meet the color-of-title requirement in the betterment statute. *Dorchester Associates LLC, v. Roudi Djabbarzadeh*, 134 WLR 2583 (Super. Ct. 2006).

#### In general.

For purposes of determining equitable lien on fraudulently conveyed property for value of

improvements made by purchaser in good faith, standards applied were those set out in statute which governed compensation owed to purchasers after losing title in ejectment action. D.C. Code 1981, § 16-1116. *M.M. & G., Inc. v. Jackson*, 612 A.2d 186, 1992 D.C. App. LEXIS 169 (1992).

#### Remedies.

As property owner, who built retaining wall that encroached on adjacent property, could not avail himself of betterment statute, elements of adjoining property owner's ejectment action were established sufficiently for court to require that encroaching part of retaining wall be removed by property owner at his expense. *Dorchester Associates LLC, v. Roudi Djabbarzadeh*, 134 WLR 2583 (Super. Ct. 2006).

## § 16-1117. New trial as to assessment.

Either party who feels aggrieved by the assessment provided for by section 16-1116, may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the verdict aside and order another jury to be empaneled in the cause to make a new assessment.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-567, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1117. 1973 Ed., § 16-1117.

### CASE NOTES

#### In general.

For purposes of obtaining equitable lien for value of improvements made on fraudulently conveyed property, buyer who bought property and made improvements in good faith and without notice of fraudulent conveyance action

was entitled to present value of permanent improvements less any damages as defined by statute. D.C. Code 1981, §§ 16-1117, 16-1118. *M.M. & G., Inc. v. Jackson*, 612 A.2d 186, 1992 D.C. App. LEXIS 169 (1992).

## § 16-1118. Judgment for damages in excess of improvements.

When the damages of the plaintiff, assessed as provided by section 16-1116, exceed the value of the permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed by section 16-1109.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1118. 1973 Ed., § 16-1118.

**CASE NOTES**

**In general.**

For purposes of obtaining equitable lien for value of improvements made on fraudulently conveyed property, buyer who bought property and made improvements in good faith and without notice of fraudulent conveyance action

was entitled to present value of permanent improvements less any damages as defined by statute. D.C. Code 1981, §§ 16-1117, 16-1118. *M.M. & G., Inc. v. Jackson*, 612 A.2d 186, 1992 D.C. App. LEXIS 169 (1992).

**§ 16-1119. Judgment when improvements and damages are equal.**

When the value of the improvements, ascertained as provided by this chapter, equal but do not exceed the plaintiff's damages, as found by the jury, the plaintiff shall be entitled to judgment only for the recovery of the property sued for and costs.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1119. 1973 Ed., § 16-1119.

**§ 16-1120. Election of plaintiff if value of improvements exceeds damages.**

If the value of the improvements referred to in this chapter is found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of the excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for the property, with all the plaintiff's right, title, and interest therein.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1120. 1973 Ed., § 16-1120.

**§ 16-1121. Judgment and writ of possession after payment for improvements.**

When the plaintiff pays to the defendant, within the time fixed therefor by the court, or, in case of the defendant's refusal to accept the payment, pays into court for the defendant's use the amount of the excess of the value of the improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession.

(Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-1121. 1973 Ed., § 16-1121.

### **§ 16-1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay.**

If the plaintiff tenders to the defendant, a deed as provided by section 16-1120 and demands the value of his property without the improvements, as found by the jury, and the defendant fails or refuses to pay the value within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and if the plaintiff is a minor, the court may authorize the deed to be executed by his guardian.

(Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1122. 1973 Ed., § 16-1122.

### **§ 16-1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed.**

If the plaintiff fails or refuses either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or, as provided by the chapter, to tender a deed to the defendant and accept from him the value of the plaintiff's property, exclusive of the improvements, the defendant may pay the value into court for the use of the plaintiff. Thereupon, the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover the property for cause theretofore existing.

(Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1123. 1973 Ed., § 16-1123.

### **§ 16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.**

(a) In a case between landlord and tenant, where one-half year's rent or more is in arrear and unpaid, and the landlord or lessor to whom the rent is due has the right by law, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of the rent due, to re-enter for non-payment of the rent, he may, without any formal demand or re-entry, commence a civil action in ejectment for the recovery of the demised premises.

(b) When a judgment is given for the plaintiff in an action pursuant to this section, and execution is had on the judgment, before the rent in arrear and costs of suit are paid, the lease of the property shall cease and be determined, unless the judgment is reversed on appeal or certiorari or, within six months after execution on the judgment, the defendant or a person who has succeeded to his interest, or a mortgagee of the lease or of any party thereof who was not

in possession when final judgment was rendered, applies to the court for an order granting equitable relief from the judgment, which is subsequently granted.

(c) When possession of the property recovered has been delivered to the plaintiff under execution issued upon a judgment in an action pursuant to this section, and, in connection with the application for equitable relief from the judgment, the defendant or other person referred to in subsection (b) of this section, has, prior to or at the time of his application, paid or tendered to the plaintiff or his legal representative or successor in interest, or paid into court for the use of the person entitled thereto, the amount of rent in arrear, as stated in the judgment and costs of suit and all damages sustained by the plaintiff, the order for restoration of possession of the property to the person who made the payment shall provide for setting off the sum that the plaintiff has made, or that he might, without fraud, deceit, or willful neglect, have made, of the property, during his possession, against the rent accruing after the judgment was rendered, and for reimbursement to the applicant of the balance, if any, of the sum paid into court by him, after making the set-off prescribed by this subsection.

(d) At any time before the trial of an action pursuant to this section, the defendant may pay or tender to the plaintiff, or pay into court, the amount of all the rent then in arrear, and costs of suit. Thereupon, the action shall be dismissed.

(Dec. 23, 1963, 77 Stat. 568, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1124. 1973 Ed., § 16-1124.

### CASE NOTES

#### In general.

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. U.S. Const. Amend. 7; D.C. Code §§ 11-102, 13-702, 16-1124, 16-1501 to 16-1505, 16-1504, 16-1901 to 16-1909; District of Columbia Court Reform and Criminal Procedure Act of 1970, § 142(5)(A), 84 Stat. 552; 18 U.S.C. §§ 2254, 2255. *Pernell v. Southall Realty*, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198, 1974 U.S. LEXIS 130 (U.S. Dist. Col. 1974).

One motivation for providing summary possessory action for landlord was to avoid resort to self-help and force, condoned at common law. D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Decision abolishing previously recognized right of landlords to use self-help eviction remedy would be given partial retroactive effect,

i.e., would be applied to instant parties, as well as prospective application. (Per Mack, A. J., with four Judges concurring.) D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Statutory remedy is, as a rule, merely cumulative and does not abolish existing common-law remedy unless so declared in express terms or by necessary implication. D.C. Code §§ 16-1501, 22-3101, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Wrongful eviction is tort for which punitive damages may be allowed, but mere commission of tort is insufficient. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Landlord's common-law right of self-help has been abrogated, and legislatively created remedies for reacquiring possession are exclusive, tenant having right not to have his or her possession interfered with except by lawful process, and violation of that right gives rise to cause of action in tort; overruling *Snitman v. Goodman*, D.C. Mun. App., 118 A.2d 394. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).



*Subchapter II. Proceedings to Discover the Death of a Tenant for Life.*

**§ 16-1151. Petition by person entitled to claim; form and contents.**

(a) A person entitled to claim real property, after the death of another person who has a prior estate therein, may, not oftener than once a year, petition the court for an order directing the production of the tenant for life, as prescribed by this subchapter, by a person, named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead, or, if there is no such person, by the guardian, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

(b) A petition prescribed by subsection (a) of this section shall be verified by the affidavit of the petitioner, and shall contain an averment that the petitioner has cause to believe that the person, upon whose life the prior estate depends, is dead, and that his or her death is being concealed by the person named in the petition.

(Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1151. 1973 Ed., § 16-1151.

**§ 16-1152. Order to produce life tenant; service of order.**

Upon the presentation of the petition and affidavit prescribed by section 16-1151, the court shall issue an order to the person named in the petition to produce and show to the persons named in the order by the petitioner not exceeding two in number, at such time and place as the court directs, the person upon whose life the prior estate depends. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court.

(Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1152. 1973 Ed., § 16-1152.

**§ 16-1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession.**

(a) If a person upon whom an order, as prescribed by section 16-1152, is served, refuses or neglects to produce the person upon whose life the prior estate depends in the manner provided by the order, the court shall order him to produce the person in court or before commissioners appointed by the court, at such time and place as the court directs. Two of the commissioners shall be nominated by the petitioner, and they shall serve at his expense. A certified

copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. The commissioners appointed shall make and file with the court a return showing the results of their investigation and their conclusions.

(b) If the person upon whom the second order prescribed by subsection (a) of this section is served refuses or neglects to produce, in court, or before the commissioners, as the case may be, the person upon whose life the prior estate depends, it shall be presumed that the latter person is dead, and the court shall issue an order permitting the petitioner to take possession of the property, as if that person were actually dead.

(Dec. 23, 1963, 77 Stat. 569, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1153. 1973 Ed., § 16-1153.

### § 16-1154. Investigation outside the District; report to court; presumption of death; right to possession.

If before, or at the time of, the presentation of the commissioners' return provided for by section 16-1153, or, where commissioners are not appointed, at any time before a final order is made, the party upon whom the first or second order is served presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the District of Columbia, the petitioner, at his own expense, may send one or both of the persons named in the first order to view him. If the person concealing or suspected of concealing the person upon whose life the prior estate depends, or the fact of his death, refuses or neglects to produce him or to procure him to be produced to the personal view of the persons sent for that purpose, the persons sent to view him shall make a true return of the refusal or neglect to the court, and the return shall be filed in the court. Thereupon, it shall be presumed that the tenant for life is dead, and the court shall issue an order permitting the petitioner to take possession of the real property, as if that person were actually dead.

(Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1154. 1973 Ed., § 16-1154.

### § 16-1155. Restoration of property to life tenant.

The possession of real property that has been awarded to a petitioner pursuant to this subchapter, upon the presumption of the death of the person upon whose life the prior estate depends, shall be restored, by an order of the court, to the person evicted, or to his heirs, or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such a petition are the



same as those prescribed by this subchapter to be followed upon the petition of the person to whom possession is awarded.

(Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1155. 1973 Ed., § 16-1155.

### § 16-1156. Recovery of profits by person evicted.

A person evicted, as prescribed by this subchapter, may, when the presumption upon which he is evicted is erroneous, maintain a civil action against the person who has occupied the property, or his executor or administrator, to recover the full profits of the property during the occupation, while the person, upon whose life the prior estate depends, is or was living.

(Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1156. 1973 Ed., § 16-1156.

### § 16-1157. Preservation of life tenants' rights if living at time of return.

When a guardian, trustee, or other person holding an estate or interest determinable upon the life of another person, shows by affidavit or otherwise to the satisfaction of the court, that:

(1) he has used his utmost efforts to procure the tenant for life to appear in the court or elsewhere, according to the order of the court;

(2) he can not procure or compel him so to appear; and

(3) the tenant for life is or was living at the time of the return made and filed, as prescribed by this subchapter —

he may continue in the possession of the estate, and receive the rents and profits for and during the infancy of the infant, or for and during the life of any other person on whose life the estate or interest depends.

(Dec. 23, 1963, 77 Stat. 570, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1157. 1973 Ed., § 16-1157.

### § 16-1158. Persons holding over after life estate; damages.

A guardian or trustee for an infant, or other person having an estate determinable upon life or lives, who, after the determination of the particular estate or interest, without the express consent of the person or persons who is or are next and immediately entitled thereto, holds over and continues in possession of the real property, is a trespasser. Any person entitled to the real property upon or after the determination of the particular estate or interest, or his executor or administrator, may recover in damages against the person so holding over, or his executor or administrator, the full value of the profits received during the wrongful possession.

(Dec. 23, 1963, 77 Stat. 571, Pub. L. 88-241, § 1.)

**Cross references.** — Building lines, condemnation proceedings, application of law, see § 6-403.

Garbage, disposal sites, authorization to acquire by condemnation, see § 8-705.

Motor vehicle parking, property acquisition, see § 50-2603.

National Capital Housing Authority, powers

and duties, condemnation proceedings, see § 6-101.02 Streets and alleys, closing procedures, in rem proceedings by Mayor, see § 9-202.11.

Streets and alleys, means for acquiring land, see § 9-203.02.

**Prior Codifications.** — 1981 Ed., § 16-1158.

1973 Ed., § 16-1158.



## CHAPTER 13. EMINENT DOMAIN.

*Subchapter I. General Provisions*

Sec.

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- 16-1302. Assignment of judge for condemnation cases.
- 16-1303. Jurisdiction of Superior Court.

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- 16-1361. Verdict.
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- 16-1363. Judgment.
- 16-1364. Force and effect of judgment; payment.
- 16-1365. Appeal; deficiency judgment.
- 16-1366. Payment of compensation into court; vesting of title.
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*Subchapter V. Excess Property for the United States*

- 16-1381. Acquisition of property in excess of needs.
- 16-1382. Retention, for public use, of excess property.
- 16-1383. Availability of appropriations for purchases of excess property.
- 16-1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs.
- 16-1385. Construction of subchapter.

*Subchapter I. General Provisions.*

## § 16-1301. Jurisdiction of District Court.

The United States District Court for the District of Columbia has exclusive jurisdiction of all proceedings for the condemnation of real property authorized

## § 16-1302 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

by subchapters IV and V of this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings.

(Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 557, Pub. L. 91-358, title I, § 145(f)(1).)

**Cross references.** — Alley and street closings, acquisition authority, see § 9-203.02.

Assessment officials as expert witnesses in condemnation proceedings, see § 14-308.

Establishment of building lines on streets, acquisition authority, see § 6-403.

Insanitary buildings, condemnation, see § 6-901 et seq.

Low income housing, acquisition authority, see § 6-101.01.

Municipal center, acquisition authority, see § 10-601.

Parks, parkways and playgrounds, acquisition authority, see § 2-1009.

Pipeline rights of way, acquisition procedure, see § 34-2401.27.

Public roads, condemnation of materials for making and repairing, see § 9-1219.01.

Railroad company, acquisition authority, see § 9-1203.06.

Refuse incinerators, site acquisition authority, see § 8-705.

Subways or viaducts and approaches, acquisition authority, see § 9-1201.15.

Telegraph and telephone companies, acquisition authority, see § 34-1921.08.

**Prior Codifications.** — 1981 Ed., § 16-1301.

1973 Ed., § 16-1301.

## § 16-1302. Assignment of judge for condemnation cases.

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such periods as he determines, one of the judges of the court to hear cases involving the condemnation of real property in the District of Columbia. In case of the disability of the judge so assigned, or for any other reason, the chief judge may assign any judge of the Court for service in condemnation cases.

(Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1302.

1973 Ed., § 16-1302.

## § 16-1303. Jurisdiction of Superior Court.

The Superior Court of the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by subchapters II and III of this chapter with full power to hear and determine all issues of law and fact that may arise in the proceedings.

(July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(2).)

**Cross references.** — Community development, acquisition of property, see § 6-1005.

Eminent domain, jurisdiction, see § 16-1303.

**Prior Codifications.** — 1981 Ed., § 16-1303.

1973 Ed., § 16-1303.

### CASE NOTES

#### Divisional jurisdiction.

Though under Court Reform Act each individual division of superior court is entrusted with specific responsibility, must follow perti-

nent statutory mandates, and must transfer inappropriate cases to proper division, where claim is related to subject matter within responsibility of division, that division may rely



upon its general equity powers to adjudicate claim and to award relief. D.C. Code 1981, § 11-101 et seq. *Poe v. Noble*, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

## *Subchapter II. Real Property for District of Columbia.*

### § 16-1311. Condemnation proceedings by District of Columbia.

When real property in the District of Columbia is needed by the Mayor of the District of Columbia for sites of schoolhouses, fire or police stations, rights-of-way for roads, highways, streets and alleys or parts thereof, rights-of-way for water mains or sewers, or any other authorized municipal use, and that property cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the Superior Court of the District of Columbia in the name of the District of Columbia for the condemnation of the property or rights-of-way and the ascertainment of its value.

(Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(3); Mar. 10, 1983, D.C. Law 4-201, § 501, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 4(g), 35 DCR 147.)

**Cross references.** — Railroad company, acquisition authority, see § 9-1203.06.

**Prior Codifications.** — 1981 Ed., § 16-1311.

1973 Ed., § 16-1311.

**Legislative history of Law 4-201.** — Law 4-201, the "Street and Alley Closing and Acquisition Procedures Act of 1982," was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Delegation of Authority.** — Delegation of Authority for Acquisition of Real Property for Baseball Stadium, see Mayor's Order 2005-130, September 20, 2005 (53 DCR 144).

Delegation of Authority to Chief Property Management Officer Pursuant to D.C. Official Code §§ 16-1311 through 16-1321, see Mayor's Order 2006-124, September 28, 2006 (53 DCR 9316).

**Mayor's Orders.** — Condemnation of Real Property for the New Convention Center, see Mayor's Order 99-114, July 19, 1999 (46 DCR 6693).

Condemnation of an Interest in Real Property, see Mayor's Order 2000-196, December 15, 2000 (47 DCR 10234).

Realignment within the Department of Housing and Community Development; Establishment of the Land Disposition and Asset Management Division, see Mayor's Order 2000-202, December 26, 2000 (48 DCR 930).

**Editor's notes.** — Section 4(g) of D.C. Law 7-104 purported to substitute "Mayor" for "Commissioner" apparently without regard to the amendment to this section by D.C. Law 4-201.

### CASE NOTES

#### ANALYSIS

Compensation.  
Condemnation.

Construction and application.

#### Compensation.

Owner of franchise business, which occupied

land taken by the District of Columbia under its eminent domain power for public use, was not entitled to compensation for business losses, goodwill, and other such consequential damages, under the Fifth Amendment; in accordance with owner's franchise agreement, franchisor terminated his lease prior to the date of condemnation, and hence he no longer had a leasehold interest, and the District's condemnation law did not authorize recovery of business loss or goodwill. *Mamo v. District of Columbia*, 934 A.2d 376, 2007 D.C. App. LEXIS 591 (2007), writ of certiorari denied by 552 U.S. 1259, 128 S. Ct. 1670, 170 L. Ed. 2d 357, 2008 U.S. LEXIS 2494, 76 U.S.L.W. 3497 (2008).

#### Condemnation.

District of Columbia, rather than mayor, was real party in interest in action to condemn real property, and thus action could not be removed on basis of diversity jurisdiction, where mayor initiated condemnation proceeding under District law in his official capacity, and condemnation was only authorized when mayor needed property for "authorized municipal use." *District of Columbia v. All of the Parcel of Land Identified in the D.C. as 2626 Naylor Rd.*, 763 F.Supp.2d 5., 2011 U.S. Dist. LEXIS 5965 (2011).

District of Columbia's action to condemn property arose under District law, rather than federal law, and thus could not be removed on basis of federal question jurisdiction, even if District's compliance with Fifth Amendment's Takings Clause was disputed, where complaint explicitly stated that authority for condemnation was rooted in District statutes. *District of Columbia v. All of the Parcel of Land Identified in the D.C. as 2626 Naylor Rd.*, 763 F.Supp.2d 5., 2011 U.S. Dist. LEXIS 5965 (2011).

The government of the District of Columbia has power to acquire real estate for any governmental purpose by purchase and if it does not succeed in acquiring them by purchase, then by condemnation. D.C. Code §§ 7-101 et seq., 16-1311. *D. C. Federation of Civic Assos. v. Airis*, 275 F. Supp. 533, 1967 U.S. Dist. LEXIS 8627 (D.D.C.1967).

Property owner's allegation that city council authorized an illegal exercise of eminent domain under false pretext did not deprive trial court of subject-matter jurisdiction over condemnation proceeding. *Franco v. District of*

*Columbia*, 39 A.3d 890, 2012 D.C. App. LEXIS 125 (2012).

City council could rationally have approved legislation allowing for condemnation of shopping center on the basis of economic development, so as to defeat property owner's allegation of pretext for reason for condemnation, where the council's committee on economic development reported on testimony it heard of the insufficient retail opportunities in the neighborhood, the likelihood that a redeveloped shopping center would be able to capture a significant portion of sales lost to other jurisdictions, and the potential to spur job creation and additional tax revenue. *Franco v. District of Columbia*, 39 A.3d 890, 2012 D.C. App. LEXIS 125 (2012).

Phrases "Outdoor Advertising Control" and "to reimburse sign and property owners for the removal of signs on residential property" as used in Appropriations Act for District of Columbia did not bespeak clear congressional intent to authorize condemnation but, to contrary, were compatible with purchase of billboards from voluntary sellers and regulation rather than taking of outdoor advertising. D.C. Code 1973, §§ 7-201, 16-1311; 23 U.S.C. §§ 131, 315; *District of Columbia Appropriation Act of 1974*, 87 Stat. 306. *Rollins Outdoor Advertising, Inc. v. District of Columbia*, 434 A.2d 1384, 1981 D.C. App. LEXIS 360 (1981).

#### Construction and application.

As used in eminent domain section of District of Columbia Code, the words "for any other municipal use authorized by Congress" are not subject to limitation of principle of statutory construction known as ejusdem generis, as purpose of the section is to provide for acquisition of real property by District of Columbia for any governmental purpose. D.C. Code §§ 7-101 et seq., 16-1311. *D. C. Federation of Civic Assos. v. Airis*, 275 F. Supp. 533, 1967 U.S. Dist. LEXIS 8627 (D.D.C.1967).

Statute providing for condemnation of private property for public use was to be strictly construed, and if any doubt existed as to authority to proceed, doubts were to be resolved in favor of person whose property was sought to be taken. D.C. Code 1973, § 16-1311; 23 U.S.C. §§ 131, 315. *Rollins Outdoor Advertising, Inc. v. District of Columbia*, 434 A.2d 1384, 1981 D.C. App. LEXIS 360 (1981).

## § 16-1312. Juries for condemnation proceedings.

For purposes of this subchapter, a special jury list shall be prepared of not less than one hundred persons who are qualified jurors in the District of Columbia. When a jury is required for a condemnation proceeding under this subchapter, the names of such number of persons as may be necessary shall be selected from this list by lot and furnished to the Superior Court.



(Dec. 23, 1963, 77 Stat. 572, Pub. L. 88-241, § 1; Mar. 27, 1968, 82 Stat. 63, Pub. L. 90-274, § 103(d); July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(4).)

**Prior Codifications.** — 1981 Ed., § 16-1312. 1973 Ed., § 16-1312.

### § 16-1313. Selection of jury; oath of jurors.

In each action brought pursuant to this subchapter, the court shall appoint, from among the persons whose names are drawn pursuant to section 16-1312, a jury of five capable and disinterested persons, and shall administer to the persons so drawn an oath or affirmation that they:

- (1) are not interested in any manner in the real property to be condemned;
- (2) are not related to the parties interested in the property; and
- (3) without favor or partiality, and to the best of their judgment, will appraise the value of the respective interests of all persons concerned in the property.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1313. 1973 Ed., § 16-1313.

### § 16-1314. Declaration of taking; contents; deposit; transfer of title; determination; interest.

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the Mayor, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a —

- (1) statement of the authority under which and the public use for which the property is taken;
- (2) description of the property taken sufficient for the identification thereof;
- (3) statement of the estate or interest in the property taken for public use;
- (4) plan showing the property taken; and
- (5) statement of the sum of money estimated by the Mayor to be just compensation for the property taken.

(b) Notwithstanding section 16-1319, upon the filing of the declaration of taking and the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the property shall be deemed to be condemned and taken for the use of the District, and the right to just compensation therefor shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of

6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(5); Apr. 30, 1988, D.C. Law 7-104, § 4(h), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-1314.

1973 Ed., § 16-1314.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

**Mayor's Orders.** — Condemnation of Real Property for the New Convention Center, see

Mayor's Order 99-114, July 19, 1999 (46 DCR 6693).

Designation of the Department of Health, Environmental Health Administration, as the Lead State Agency for Asbestos Management Plan Approval in D.C. pursuant to the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2645(b)(2), see Mayor's Order 99-115, July 20, 1999 (46 DCR 6694).

## § 16-1315. Distribution of money deposited on declaration of taking; judgment for deficiency or overpayment; execution.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1314, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure. A writ of execution may be issued on the judgment within the same time, and it shall have the same effect as a lien, and shall be executed and returned in the same manner, as if issued on any other judgment.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1315.

1973 Ed., § 16-1315.

## § 16-1316. Time for surrender of possession under declaration of taking; adjustment of charges.

Upon the filing of the declaration of taking provided for by section 16-1314, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiffs. The court may make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable.

(Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-1316. 1973 Ed., § 16-1316.

**CASE NOTES**

**ANALYSIS**

Assessments.  
Jurisdiction.  
Priorities.  
Review.  
Taxes.

**Assessments.**

Entitlement of the District of Columbia Redevelopment Land Agency to reimbursement for its payment of demolition assessment on condemned property would include amount of interest which accrued over some two years on unpaid debt. D.C. Code §§ 47-1003, 47-1006, 47-1011. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628, 1978 U.S. App. LEXIS 7869 (C.A.D.C.1978).

**Jurisdiction.**

In appeal from trial court's order granting condemnor's motion for immediate possession, which order was appealable as an interlocutory order changing or affecting possession of property, appellate court would exercise pendent appellate jurisdiction over trial court's order granting condemnor's motion to strike condemnee's defenses, which order ordinarily would not be immediately appealable; trial court explicitly linked its grant of immediate possession to its previous decision to strike the defenses, appellate court would be unable to meaningfully review the order transferring possession without considering the predicate decision to strike condemnee's defenses, and record on appeal was adequate for review of order striking the defenses. Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

Trial court's order granting condemnor's motion for immediate possession was an interlocutory order changing or affecting the possession of property, as basis for statutory appellate jurisdiction. Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

**Priorities.**

Where private and public claims compete for

proceeds from a tax sale, payment to government takes priority over satisfaction of private interests. D.C. Code § 47-1003. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628, 1978 U.S. App. LEXIS 7869 (C.A.D.C.1978).

The District of Columbia Redevelopment Land Agency, having satisfied demolition assessment on condemned property in order to prevent tax sale, would be subrogated to government's general priority to condemnation funds. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628, 1978 U.S. App. LEXIS 7869 (C.A.D.C.1978).

Where private and public claims compete for proceeds from a condemnation, payment to government will take priority over satisfaction of private interests. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628, 1978 U.S. App. LEXIS 7869 (C.A.D.C.1978).

**Review.**

Trial court's decision to grant immediate possession of condemned property is reviewed for abuse of discretion. Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

**Taxes.**

General real estate taxes are levied against the property and are interests in rem. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628, 1978 U.S. App. LEXIS 7869 (C.A.D.C.1978).

When Federal Government took possession of real estate in District of Columbia, prior owner's liability to District for real estate taxes assessed preceding July 1 could not be prorated so as to relieve property of such taxation for that part of taxing period succeeding the seizure. U.S. Const. Amend. 5; D.C. Code 1961, §§ 16-628, 16-1316; Declaration of Taking Act, § 1, 40 U.S.C. § 258a. District of Columbia v. Sussman, 352 F.2d 683, 1965 U.S. App. LEXIS 4801 (C.A.D.C. 1965).

**§ 16-1317. Objections to jurors; appraisalment.**

The court, before accepting the jury in a condemnation proceeding pursuant to this subchapter, shall hear any objections that may be made to any member thereof, and may pass upon any objection, and may excuse any juror or cause any vacancy in the jury, when empaneled, to be filled. After the jury is organized and have viewed and examined the land and premises affected by

the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property, where the appraisement shall be recorded. In making their decision, the jury shall take into consideration, when a part only is taken, the benefit to the remainder of the tract, and shall give their appraisement accordingly.

(Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1317. 1973 Ed., § 16-1317.

### CASE NOTES

#### ANALYSIS

Admissibility of evidence.  
Appraisement.

#### Admissibility of evidence.

In condemnation proceedings, discretion of trial judge in connection with admission of testimony of expert witness who had based his testimony on improper and incompetent grounds must be tempered by policy in favor of permitting owners to testify as to value of condemned property. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

Owner, who does not testify as just another expert but from his unique position as individual that stands to gain or lose most from tribunal's determination of value of his property, has right to place all evidence pertaining to value of condemned property before trier of fact. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

Where, inter alia, landowner sought to introduce evidence not of comparability of two pieces of land but to demonstrate comparability of two similar business operations thereon, testimony was not so substantially based on incomparable piece of property as to override special rule permitting owners to testify as to value, and thus landowner should have been permitted to testify as to value of condemned property even though his opinion was based in part on his

experience with property which had been found not comparable, with such factors as difference in size, frontage and location going to weight of testimony. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

Testimony of expert witness who basis his testimony on improper and incompetent grounds should not be admitted since probative value of such testimony, stripped of its claim of expertise, is very low, while likelihood that it will confuse trier of fact is very high. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

As a general rule, opinion of landowner as to value of his land is admissible in condemnation proceedings without further qualification because of his close relationship with land. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

#### Appraisement.

Generally, "just compensation" for property taken by government is compensation sufficient to make good owner's loss with owner entitled to full money equivalent of property taken so as to be put in as good a position pecuniarily as he would have occupied if property had not been taken. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 1976 U.S. App. LEXIS 12745 (C.A.D.C. 1976).

## § 16-1318. Objections or exceptions to appraisement; new jury.

- (a) Objections or exceptions to an appraisement of the jury pursuant to



section 16-1317 may be filed within twenty days after the return of the appraisalment to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisalment, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisalment is vacated and set aside, the court shall order the necessary number of new persons selected from the special jury list and, from among the persons so selected, shall appoint a new jury of five capable and disinterested persons who shall proceed as in the case of the first jury. The appraisalment of the new jury shall be final when confirmed by the court.

(b) When an appraisalment is vacated in part, the residue thereof as to the property condemned is not affected thereby.

(Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(6).)

**Prior Codifications.** — 1981 Ed., § 16-1318. 1973 Ed., § 16-1318.

### § 16-1319. Payment of award; transfer of title.

If the appraisalment of the jury pursuant to section 16-1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisalment of the new jury is confirmed by the court, the Mayor shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 9-1217.24 [repealed], and thereupon the title to the property condemned shall vest in the District of Columbia.

(Dec. 23, 1963, 77 Stat. 574, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); Apr. 30, 1988, D.C. Law 7-104, § 4(i), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-1319. torical and Statutory Notes following § 16-1311.

1973 Ed., § 16-1319.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see His-

**References in text.** — Section 9-1217.24, referred to in this section, was repealed by D.C. Law 4-201, § 19, effective March 10, 1983.

### § 16-1320. Fixing time for return of verdict.

In every case involving the condemnation of real property under this subchapter, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or the report to the court the reasons why the verdict or appraisalment can not be returned by the time fixed. The court has discretion to extend the time for the return of the verdict or appraisalment.

(Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1320. 1973 Ed., § 16-1320.

§ 16-1321. Abandonment of proceedings; liability.

In a condemnation proceeding pursuant to this subchapter, it is optional with the Mayor to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property.

(Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); Mar. 24, 1998, D.C. Law 12-81, § 10(p), 45 DCR 745.)

**Cross references.** — Philadelphia, Baltimore, and Washington Railroad Company, acquisition authority, see § 9-1203.06.

Eminent domain, jurisdiction, see § 16-1303.

**Prior Codifications.** — 1981 Ed., § 16-1321.

1973 Ed., § 16-1321.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998,"

was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

*Subchapter III. Excess Property for Development of Seat of Government.*

§ 16-1331. Acquisition of property in excess of needs.

In order to promote the orderly and proper development of the seat of government of the United States, the Mayor of the District of Columbia may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land or rights in, or on land, or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property.

(Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(8); Apr. 30, 1988, D.C. Law 7-104, § 4(j), 35 DCR 147.)



**Cross references.** — Public lands acquisition and sale, see § 10-801 et seq.

**Prior Codifications.** — 1981 Ed., § 16-1331.

1973 Ed., § 16-1331.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

## § 16-1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys.

(a) The Mayor of the District of Columbia may, with the consent of the Council in accordance with section 10-801, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works —

with such reservations concerning the future use and occupation of the property as, in the Mayor's discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisal of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States to the credit of the revenues of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 575, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(9); Apr. 30, 1988, D.C. Law 7-104, § 4(k), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-96, § 6, 37 DCR 795; Mar. 24, 1998, D.C. Law 12-81, § 10(q), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1332.

1973 Ed., § 16-1332.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

**Legislative history of Law 8-96.** — Law 8-96, the "Disposal of District Owned Surplus Real Property Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No. 8-148 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1321.

**Editor's notes.** — Disposal of surplus real property: Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term "real property" means land titled in the name of the District of Columbia ("District") or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

## § 16-1333. Notice of sale of excess property.

When excess real property is to be sold pursuant to section 16-1332, notice

of not less than twenty days before the sale shall be published in a daily newspaper published in the District of Columbia, and notice shall be sent before the sale, by registered mail or by certified mail, to the last-known address of the persons listed on the records of the assessor of the District as the owners of the property abutting on the property to be sold.

(Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1333. 1973 Ed., § 16-1333.

**§ 16-1334. Retention, for public use, of excess property.**

When the authorities of the District of Columbia having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest.

(Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(10).)

**Prior Codifications.** — 1981 Ed., § 16-1334. 1973 Ed., § 16-1334.

**§ 16-1335. Availability of appropriations for purchase of excess property.**

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter.

(Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1335. 1973 Ed., § 16-1335.

**§ 16-1336. Condemnation of excess real property by Mayor; payment of awards, damages, and costs; no assessments for benefits.**

(a) When, pursuant to this subchapter, excess real property is condemned by the Mayor, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter II of this chapter.

(b) Appropriations available for the payment of awards, damages, and condemnation proceedings pursuant to subchapter II of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings for the acquisition of excess real property, as provided by this subchapter.



(c) Appropriations available for the payment of awards, damages, and costs in condemnation proceedings pursuant to subchapter II of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings thereunder for the acquisition of excess real property as provided by this subchapter.

(d) In all cases where excess real property is condemned, assessments for benefits may not be levied by the jury in respect to the acquisition of the property.

(Dec. 23, 1963, 77 Stat. 576, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(7); Mar. 10, 1983, D.C. Law 4-201, § 502, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 4(l), 35 DCR 147; Feb. 5, 1994, D.C. Law 10-68, § 20(a), 40 DCR 6311.)

**Prior Codifications.** — 1981 Ed., § 16-1336.

1973 Ed., § 16-1336.

**Legislative history of Law 4-201.** — For legislative history of D.C. Law 4-201, see Historical and Statutory Notes following § 16-1311.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993,

and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Editor's notes.** — Section 4(l)(3)-(6) of D.C. Law 7-104 purported to substitute "7-213" for "7-214" 1981 Ed., and "7-214" for "7-215" 1981 Ed. in subsection (a), "7-322" for "7-323" 1981 Ed. in subsections (a) and (c), and "7-301" for "7301" 1981 Ed. in subsection (c), apparently without regard to the amendment to this section by D.C. Law 4-201.

The reference in subsection (b) to "sections referred to by subsection (a)" has been rendered obsolete by amendments made in D.C. Law 4-201.

## § 16-1337. Construction of subchapter.

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia.

(Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(11).)

**Cross references.** — Acquisition of mass transit bus systems, condemnation proceedings, see § 9-1113.06.

Eminent domain, jurisdiction, District Court, see § 16-1301.

**Prior Codifications.** — 1981 Ed., § 16-1337.

1973 Ed., § 16-1337.

### *Subchapter IV. Real Property for United States.*

## § 16-1351. Definition.

As used in this subchapter, "acquiring authority" means the head of an executive department or agency of the United States, or other officer of the United States, or board or commission of the United States, authorized by law to acquire real property in the District of Columbia for the construction of

public buildings or works, or for parks, parkways, public playgrounds, or other public purpose.

(Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1; Apr. 30, 1988, D.C. Law 7-104, § 4(m), 35 DCR 147.)

**Cross references.** — Metropolitan Area Transit Authority, eminent domain powers, see § 9-1107.01.

**Prior Codifications.** — 1981 Ed., § 16-1351.

1973 Ed., § 16-1351.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

## § 16-1352. Condemnation proceedings by Attorney General.

When, for the purposes specified by section 16-1351, it is deemed necessary or advantageous to do so, the acquiring authority may acquire real property in the District of Columbia in the name of the United States by condemnation under judicial process. The Attorney General of the United States, upon the request of the acquiring authority, shall institute a proceeding for the condemnation of the property in the United States District Court for the District of Columbia.

(Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**Cross references.** — Streets and alleys, condemnation, § 9-203.02 et seq.

1973 Ed., § 16-1352.

**Prior Codifications.** — 1981 Ed., § 16-1352.

## § 16-1353. Declaration of taking; contents; deposit; transfer of title; determination; interest.

(a) In an action pursuant to this subchapter, the plaintiff may file in the cause, with the complaint or at any time before judgment, a declaration of taking signed by the acquiring authority empowered by law to acquire the property described in the complaint, declaring that the property is thereby taken for the use of the United States. The declaration of taking shall contain or have annexed thereto a —

(1) statement of the authority under which and the public use for which the lands are taken;

(2) description of the lands taken sufficient for the identification thereof;

(3) statement of the estate or interest in the lands taken for public use;

(4) plan showing the lands taken; and

(5) statement of the sum of money estimated by the acquiring authority to be just compensation for the property taken.

(b) Upon the filing of the declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, vests in the United States of America, and the property shall be



deemed to be condemned and taken for the use of the United States, and the right to just compensation therefor vests in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage.

(Dec. 23, 1963, 77 Stat. 577, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1353. 1973 Ed., § 16-1353.

### CASE NOTES

#### ANALYSIS

Compensation.  
Interest.  
Remedies of property owners.

#### Compensation.

For purposes of taking clause of Fifth Amendment to United States Constitution, "just compensation" means full and perfect equivalent in money of property value. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Where government takes property by eminent domain, it is required to pay just compensation under Fifth Amendment to United States Constitution. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

#### Interest.

Even absent statute which provides for award of interest in condemnation proceeding, right to interest attaches automatically to right of award of damages arising out of condemnation, though statutory rate may be used if court

determines that it is reasonable and fair. D.C. Code 1981, § 16-1353(b). District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Determination of proper rate of interest on award of damages arising out of condemnation is question of fact and ultimate determination requires exercise of discretion. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

#### Remedies of property owners.

"Inverse condemnation" is proceeding where landowner recovers just compensation for taking of his property when condemnation proceedings have not been instituted. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

When government acquires title to real property without payment of just compensation, remedy is award for same and discharge of equitable lien. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

## § 16-1354. Distribution of money deposited on declaration of taking; judgment for deficiency.

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16-1353, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency in the manner provided by rule 71A (j) of the Federal Rules of Civil Procedure.

**§ 16-1355** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(r), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1354.

1973 Ed., § 16-1354.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1321.

**CASE NOTES**

**ANALYSIS**

Compensation.

Interest.

**Compensation.**

For purposes of taking clause of Fifth Amendment to United States Constitution, "just compensation" means full and perfect equivalent in money of property value. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Where government takes property by eminent domain, it is required to pay just compensation under Fifth Amendment to United States Constitution. U.S. Const. Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

**Interest.**

Even absent statute which provides for

award of interest in condemnation proceeding, right to interest attaches automatically to right of award of damages arising out of condemnation, though statutory rate may be used if court determines that it is reasonable and fair. D.C. Code 1981, § 16-1353(b). District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Determination of proper rate of interest on award of damages arising out of condemnation is question of fact and ultimate determination requires exercise of discretion. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

**§ 16-1355. Time for surrender of possession under declaration of taking; adjustment of charges.**

Upon the filing of a declaration of taking provided for by section 16-1353, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiff. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable.

(Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1355.

1973 Ed., § 16-1355.

**CASE NOTES**

**ANALYSIS**

Attorney fees.

Liens.

Rent.

Taxes.

Title.

**Attorney fees.**

Attorney was not entitled to award of attorney's fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act where government acquired real property on which attorney had equitable lien by condemnation proceeding, but failed to secure payment



to attorney by joining him in condemnation action. D.C. Code 1981, § 16-1353; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, §§ 101-305, 304(c), 42 U.S.C. §§ 4601-4655, 4654(c). *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

### Liens.

Attorney was not collaterally estopped from litigating claim that he had attorney's lien on real property owned by clients and subsequently condemned, on basis of federal court action brought by attorney against title company which disbursed proceeds of condemnation; question as to whether attorney had lien on clients' equity in property was not actually litigated except to extent of question as to whether lien attached to proceeds of condemnation funds, and earlier case did not resolve question of how attorney's lien on proceeds arose. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney who filed suit against clients asserting claim of lien on clients' real property after condemnor filed complaint for condemnation with respect to same property did not, under doctrine of *lis pendens*, lose his right to compensation for lien; attorney and clients had oral contract for payment of contingency out of equity of clients' property, and thus lien attached by agreement prior to condemnation suit, and condemnor had actual notice of attorney's claimed interest in property well before it released proceeds of condemnation, and thus should have joined attorney as party to proceeding relating to property. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Fact that attorney filed suit asserting claim of lien against clients' real property pursuant to oral contingent fee contract executed by attorney and clients after condemnor filed complaint for condemnation with respect to same property did not cut off attorney's right to compensation for lien; attorney and clients' agreement for payment of attorney's fee out of equity of property resulted in lien upon property attaching by agreement prior to condemnation suit, and condemnor had actual notice of attorney's claimed interest in property well prior to release of proceeds of condemnation. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney's action against condemnor of clients' property for wrongfully cutting off attorney's perfected equitable lien on that property by failing to join attorney in condemnation proceedings was not barred as *res judicata* by

earlier action brought by attorney against condemnor's title insurance company for wrongfully disbursing proceeds of condemnation funds without paying attorney; title insurance company acted only as condemnor's title insurer, and condemnation funds were actually disbursed by another title insurer acting on behalf of clients and without authorization of title insurance company. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

District of Columbia has no statute providing for attorney's liens; therefore creation or existence of such liens is governed by common-law rules. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney's liens are recognized and enforceable in District of Columbia. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Where it reasonably appears that attorney and client by contract looked to particular property for payment of contingent fee, equitable lien against property is created as intended by parties; principal applies whether particular property involved is real or personal property. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Oral contract between attorney and clients under which attorney was to be paid fee from equity in clients' real property, should attorney successfully preserve property from foreclosure until property could be condemned, created attorney's lien on clients' property before property was condemned where attorney was successful in doing so; attorney performed fully under contract, and all that remained to be done was for payment to be made from equity preserved in property. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney's equitable lien on clients' real property transferred to fund deposited into court by condemnor when subject property was condemned; lien was created pursuant to oral contract between attorney and clients, lien attached no later than time when property was condemned, and lien related back to commencement of action by attorney on clients' behalf which preserved property for clients until condemnation. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney was not entitled to award of attorney's fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act where government acquired real property on which attorney had equitable lien by condemnation proceeding, but failed to secure payment to attorney by joining him in condemnation

action. D.C. Code 1981, § 16-1353; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, §§ 101-305, 304(c), 42 U.S.C. §§ 4601-4655, 4654(c). District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney who held equitable lien on clients' real property pursuant to oral contingent fee contract with clients could recover from government agency, which condemned property in question but failed to join attorney, where failure deprived attorney of his right to be paid for his lien, and condemnor was on actual notice of attorney's claimed interest in subject property prior to releasing proceeds of condemnation, even though attorney filed suit to enforce his lien against clients subsequent to condemnor's filing suit and depositing compensation funds into court; consequences of condemnor's failure to join known interested party can result in double payment of compensation. Fed.R.Civ.Proc. Rule 71A(c)(2), 18 U.S.C. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

#### Rent.

Court properly ordered payment of \$1,200 per month rent to government, after filing of declaration of taking and deposit of estimated amount of compensation, so long as former owner of hotel taken by federal government remained in possession and continued to operate it. D.C. Code 1961, §§ 16-1353, 16-1355.

Certain Land in Washington v. United States, 355 F.2d 825, 1965 U.S. App. LEXIS 3569 (C.A.D.C. 1965).

#### Taxes.

Dollar amount of tax liability for which owners are liable for portion of year in respect of which property owners have been deprived of use of their property by condemnation is admissible as element of damages. District of Columbia v. Sussman, 352 F.2d 683, 1965 U.S. App. LEXIS 4801 (C.A.D.C. 1965).

When Federal Government took possession of real estate in District of Columbia, prior owner's liability to District for real estate taxes assessed preceding July 1 could not be prorated so as to relieve property of such taxation for that part of taxing period succeeding the seizure. U.S. Const. Amend. 5; D.C. Code 1961, §§ 16-628, 16-1316; Declaration of Taking Act, § 1, 40 U.S.C. § 258a. District of Columbia v. Sussman, 352 F.2d 683, 1965 U.S. App. LEXIS 4801 (C.A.D.C. 1965).

#### Title.

When a declaration of taking is filed and estimated amount of compensation is deposited, title to condemned property vests in United States and court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. D.C. Code 1961, §§ 16-1353, 16-1355. Certain Land in Washington v. United States, 355 F.2d 825, 1965 U.S. App. LEXIS 3569 (C.A.D.C. 1965).

## § 16-1356. Setting date for trial.

In a proceeding pursuant to this subchapter, after all defendants have been served with notice, and there has been return of service, as provided by rule 71A(d) of the Federal Rules of Civil Procedure, and after defendants have appeared or answered in the manner provided by rule 71A(e) thereof, either personally or by their guardians ad litem or other legal representatives, or are in default, the case shall be regarded as ready for trial, and, upon the application of any party to the proceeding, the court shall forthwith set an early date to be fixed by it, not less than ten nor more than twenty days from the date of the application, for the trial of the issues of law and fact raised in the case, and the ascertainment of the compensation or damages to be awarded for the taking of the property to be condemned.

(Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1356. 1973 Ed., § 16-1356.



### § 16-1357. Drawing of jurors, and selection of jury; qualifications.

When the date for trial has been set, as provided by section 16-1356, the court shall order the names of a number of persons, not less than twenty, selected from the special jury list provided by section 16-1312, and the names of the persons selected shall be certified to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are not in the service or employment of the United States or of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 578, Pub. L. 88-241, § 1; Mar. 27, 1968, 82 Stat. 63, Pub. L. 90-274, § 103(e); July 29, 1970, 84 Stat. 558, Pub. L. 91-358, title I, § 145(f)(12).)

**Prior Codifications.** — 1981 Ed., § 16-1357. 1973 Ed., § 16-1357.

### § 16-1358. Oath of jurors.

The jurors selected and impaneled, as provided by section 16-1357, shall take an oath or affirmation, administered by the court, that they:

- (1) are not interested in any manner in the property to be condemned;
- (2) are not, to their knowledge, related to any person interested in the property; and
- (3) will, impartially and to the best of their judgment, ascertain, appraise, and award just compensation for the property to be condemned and taken in the proceeding.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1358. 1973 Ed., § 16-1358.

### § 16-1359. Inspection of property by jury; presence of parties.

After being selected, impaneled, and sworn, as provided by sections 16-1357 and 16-1358, and before hearing the evidence, the jury, in order to inspect the property to be acquired, shall be taken upon the property by the United States

marshal at a time fixed by the court. All parties in interest, their attorneys, and representatives have the right to be present at the inspection.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1359. 1973 Ed., § 16-1359.

## § 16-1360. Trial; evidence; measure of compensation.

After the inspection provided for by section 16-1359, and the jury has returned to the court, the trial of the cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of its taking, has the right to submit evidence concerning the value of the property, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the property. A new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the property to be taken, erected, or made thereon after the institution of the condemnation proceedings may not be taken into consideration in assessing and awarding compensation for the property. When the property to be valued has been taken by virtue of a declaration of taking, as provided by section 16-1353, it shall be valued for the purposes of compensation as of the date of the taking. When, by act of the owner or other party claiming to be entitled to compensation, the value of the property for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if the plaintiff so elects, shall be made in assessing compensation for the diminution in value.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(s), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-1360. 1973 Ed., § 16-1360.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-1321.

## § 16-1361. Verdict.

At the close of the evidence in a proceeding pursuant to this subchapter, the court shall charge the jury and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court. The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-1361. 1973 Ed., § 16-1361.

### § 16-1362. Fixing date for new trial; new jurors.

If a verdict rendered pursuant to section 16-1361, or any award contained therein, is set aside or vacated, the court shall —

(1) grant a new trial with respect to the property as to which the verdict or award is set aside or vacated;

(2) fix a date for the new trial; and

(3) order a new panel of prospective jurors to be drawn, certified, or summoned as provided by section 16-1357.

The court shall then proceed with the cause as if a verdict or award had not been rendered.

(Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1362. 1973 Ed., § 16-1362.

### § 16-1363. Judgment.

Judgment upon a verdict returned pursuant to section 16-1361 or any award contained therein shall be entered against the United States in favor of the parties entitled for the sums awarded as just compensation, respectively, for the property condemned for the use of the United States.

(Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1363. 1973 Ed., § 16-1363.

### § 16-1364. Force and effect of judgment; payment.

A final judgment rendered against the United States pursuant to this subchapter has like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued. The amount of the final judgment shall be paid out of any specific appropriation applicable to the case. If a specific appropriation does not exist, the judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction.

(Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1364. 1973 Ed., § 16-1364.

### § 16-1365. Appeal; deficiency judgment.

A party aggrieved by a final judgment in a proceeding pursuant to this subchapter may appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit. The appeal, or any bond or undertaking given

therein, does not operate to prevent or delay the vesting of title to the property in the United States, but upon the filing of a declaration of taking, or, if a declaration of taking is not filed, upon payment to the party entitled, or deposit in the registry of the court, of the amount awarded by the judgment, title vests in the United States, saving to all parties their right to just compensation. If the compensation finally awarded and adjudged for the property exceeds the amount awarded and adjudged by the judgment appealed from, the court shall enter judgment for the deficiency with interest as provided by this subchapter.

(Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1365. 1973 Ed., § 16-1365.

### CASE NOTES

**Review.**

Order of possession to allow the Washington Metropolitan Area Transit Authority to conduct test boring in cemetery was subject to review by the Court of Appeals where, had such Court not stayed the order, the Authority would have taken possession and completed its borings

before any review could have been had, leaving cemetery owner without remedy. D.C. Code § 16-1365. Washington Metropolitan Area Transit Authority v. One Parcel of Land in District of Columbia Vestry of Rock Creek Parish, 514 F.2d 1350, 1975 U.S. App. LEXIS 14081 (C.A.D.C. 1975).

## § 16-1366. Payment of compensation into court; vesting of title.

Payment into the registry of the court for the use of the parties entitled of the sum adjudged to be just compensation for the property to be condemned and taken, or for any parcel thereof, or any interest therein, pursuant to this subchapter, constitutes payment of the compensation. Upon the payment, the plaintiff is entitled to an order declaring that the title to the property in respect of which the compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in the property, according to their respective estates and interest, and the money shall take the place and stand in lieu of the property condemned. The court, upon the application of the plaintiff or of any party in interest, may determine and direct who is entitled to receive payment of the money so paid into the registry, and, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which the determination and direction are to be made.

(Dec. 23, 1963, 77 Stat. 580, Pub. L. 88-241, § 1.)

**Cross references.** — Metropolitan Area Transit Authority, eminent domain powers, see § 9-1107.01.

**Prior Codifications.** — 1981 Ed., § 16-1366. 1973 Ed., § 16-1366.



## CASE NOTES

## ANALYSIS

Attorney fees.  
 Compensation.  
 Interest.  
 Liens.  
 Remedies of property owners.

**Attorney fees.**

Attorney was not entitled to award of attorney's fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act where government acquired real property on which attorney had equitable lien by condemnation proceeding, but failed to secure payment to attorney by joining him in condemnation action. D.C. Code 1981, § 16-1353; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, §§ 101-305, 304(c), 42 U.S.C. §§ 4601-4655, 4654(c). *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

**Compensation.**

For purposes of taking clause of Fifth Amendment to United States Constitution, "just compensation" means full and perfect equivalent in money of property value. U.S. Const. Amend. 5. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Where government takes property by eminent domain, it is required to pay just compensation under Fifth Amendment to United States Constitution. U.S. Const. Amend. 5. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

**Interest.**

Even absent statute which provides for award of interest in condemnation proceeding, right to interest attaches automatically to right of award of damages arising out of condemnation, though statutory rate may be used if court determines that it is reasonable and fair. D.C. Code 1981, § 16-1353(b). *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Determination of proper rate of interest on award of damages arising out of condemnation is question of fact and ultimate determination requires exercise of discretion. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

**Liens.**

Attorney's action against condemnor of clients' property for wrongfully cutting off attorney's perfected equitable lien on that property

by failing to join attorney in condemnation proceedings was not barred as *res judicata* by earlier action brought by attorney against condemnor's title insurance company for wrongfully disbursing proceeds of condemnation funds without paying attorney; title insurance company acted only as condemnor's title insurer, and condemnation funds were actually disbursed by another title insurer acting on behalf of clients and without authorization of title insurance company. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney's equitable lien on clients' real property transferred to fund deposited into court by condemnor when subject property was condemned; lien was created pursuant to oral contract between attorney and clients, lien attached no later than time when property was condemned, and lien related back to commencement of action by attorney on clients' behalf which preserved property for clients until condemnation. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Oral contract between attorney and clients under which attorney was to be paid fee from equity in clients' real property, should attorney successfully preserve property from foreclosure until property could be condemned, created attorney's lien on clients' property before property was condemned where attorney was successful in doing so; attorney performed fully under contract, and all that remained to be done was for payment to be made from equity preserved in property. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney who filed suit against clients asserting claim of lien on clients' real property after condemnor filed complaint for condemnation with respect to same property did not, under doctrine of *lis pendens*, lose his right to compensation for lien; attorney and clients had oral contract for payment of contingency out of equity of clients' property, and thus lien attached by agreement prior to condemnation suit, and condemnor had actual notice of attorney's claimed interest in property well before it released proceeds of condemnation, and thus should have joined attorney as party to proceeding relating to property. *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Fact that attorney filed suit asserting claim of lien against clients' real property pursuant to oral contingent fee contract executed by attorney and clients after condemnor filed complaint for condemnation with respect to same prop-

erty did not cut off attorney's right to compensation for lien; attorney and clients' agreement for payment of attorney's fee out of equity of property resulted in lien upon property attaching by agreement prior to condemnation suit, and condemnor had actual notice of attorney's claimed interest in property well prior to release of proceeds of condemnation. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney who held equitable lien on clients' real property pursuant to oral contingent fee contract with clients could recover from government agency, which condemned property in question but failed to join attorney, where failure deprived attorney of his right to be paid for his lien, and condemnor was on actual notice of attorney's claimed interest in subject property prior to releasing proceeds of condemnation, even though attorney filed suit to enforce his lien against clients subsequent to condemnor's filing suit and depositing compensation funds into court; consequences of condemnor's failure to join known interested party can result in double payment of compensation. Fed.R.Civ.Proc. Rule 71A(c)(2), 18 U.S.C. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

District of Columbia has no statute providing for attorney's liens; therefore creation or existence of such liens is governed by common-law rules. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney's liens are recognized and enforceable in District of Columbia. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Where it reasonably appears that attorney and client by contract looked to particular property for payment of contingent fee, equitable lien against property is created as intended by parties; principal applies whether particular property involved is real or personal property. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

Attorney was not collaterally estopped from litigating claim that he had attorney's lien on real property owned by clients and subsequently condemned, on basis of federal court action brought by attorney against title company which disbursed proceeds of condemnation; question as to whether attorney had lien on clients' equity in property was not actually litigated except to extent of question as to whether lien attached to proceeds of condemnation funds, and earlier case did not resolve question of how attorney's lien on proceeds arose. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

#### Remedies of property owners.

"Inverse condemnation" is proceeding where landowner recovers just compensation for taking of his property when condemnation proceedings have not been instituted. U.S.C. Const.Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

When government acquires title to real property without payment of just compensation, remedy is award for same and discharge of equitable lien. U.S. Const.Amend. 5. District of Columbia Redevelopment Land Agency v. Dowdey, 618 A.2d 153, 1992 D.C. App. LEXIS 338 (1992).

### § 16-1367. Delivery of possession.

Where possession has not been awarded pursuant to a declaration of taking, and the adjudged compensation has been paid into the registry as directed by the judgment of the court and a certified copy of the judgment, with a certificate of the clerk of the court showing the payment, has been served upon the person in possession of the property, he shall, upon demand, deliver possession thereof to the plaintiff. If possession is not delivered when so demanded, the plaintiff may apply to the court without notice, unless the court requires notice to be given, for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as referred to in this section, shall thereupon cause the writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property.

(Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-1367. 1973 Ed., § 16-1367.

## § 16-1368. Additional powers of court.

Where the mode or manner of conducting a proceeding pursuant to this subchapter is not expressly provided for by law or rules of court in force under authority of law, the court may make all necessary orders and give all necessary directions to carry into effect the object and intent of this subchapter or any other laws conferring authority to acquire real property for the use of the United States.

(Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

**Cross references.** — Eminent domain, jurisdiction, District Court, see § 16-1301. 1973 Ed., § 16-1368.

**Prior Codifications.** — 1981 Ed., § 16-1368.

### *Subchapter V. Excess Property for the United States.*

## § 16-1381. Acquisition of property in excess of needs.

In order to promote the orderly and proper development of the seat of government of the United States, agencies of the United States authorized by law to acquire real property, may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation fee simple title to land (or rights in or on land or easements or restrictions therein) within the District of Columbia for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness, to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardships to the owners of adjacent private property by depriving them of the beneficial use of their property.

(July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13).)

**Prior Codifications.** — 1981 Ed., § 16-1381. 1973 Ed., § 16-1381.

## § 16-1382. Retention, for public use, of excess property.

When the authorities of the United States having jurisdiction of real property (or rights or easements) acquired pursuant to this subchapter, elect to retain any of them for the use of the United States, they may use the property (or rights or easements) for park, playground, highway, or alley purposes, or for any other lawful purposes that they deem advantageous or in the public interest.

(July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13).)

**Prior Codifications.** — 1981 Ed., § 16-1382. 1973 Ed., § 16-1382.

**§ 16-1383. Availability of appropriations for purchases of excess property.**

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter.

(July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13).)

**Prior Codifications.** — 1981 Ed., § 16-1383. 1973 Ed., § 16-1383.

**§ 16-1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs.**

(a) When excess real property is condemned by agencies of the United States as provided by this subchapter, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

(b) Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided in this subchapter.

(July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13).)

**Prior Codifications.** — 1981 Ed., § 16-1384. 1973 Ed., § 16-1384.

**§ 16-1385. Construction of subchapter.**

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the laws relating to the subdividing of lands in the District of Columbia.

(July 29, 1970, 84 Stat. 559, Pub. L. 91-358, title I, § 145(f)(13).)

**Prior Codifications.** — 1981 Ed., § 16-1385. 1973 Ed., § 16-1385.



## CHAPTER 15. FORCIBLE ENTRY AND DETAINER.

Sec.

- 16-1501. Definition; summons.  
 16-1502. Service of summons.  
 16-1503. Judgment and execution for possession.

Sec.

- 16-1504. [Repealed].  
 16-1505. Conclusiveness of judgment.

## § 16-1501. Definition; summons.

When a person detains possession of real property without right, or after his right to possession has ceased, the Superior Court of the District of Columbia, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons in English and Spanish to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession.

(Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(1); June 29, 1984, D.C. Law 5-90, § 2(a), 31 DCR 2537.)

**Cross references.** — Ejectment actions, see § 42-3210.

Forcible entry and detainer, see § 22-3301.

Remedies of purchaser upon refusal to deliver possession, see § 15-318.

Sufferance estates, see § 42-520.

**Prior Codifications.** — 1981 Ed., § 16-1501.

1973 Ed., § 16-1501.

**Legislative history of Law 5-90.** — Law

5-90, the "Eviction Procedures Act of 1984," was introduced in Council and assigned Bill No. 5-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-131 and transmitted to both Houses of Congress for review.

## CASE NOTES

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**Construction and application.**

Purpose of District of Columbia statutes governing summary proceedings by landlord to regain possession of premises is to provide court relief to landlord, otherwise trapped by relatively slow, fairly complex and substantially expensive procedure of the common-law possessory action of ejectment, to avoid resort to self-help and force, condoned at common law as justified, and to permit an expeditious judicial determination of what remains in possessory action. D.C. Code §§ 16-1501 to 16-1503,

45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Provisions of statute requiring that defendant in action for possession of realty must enter special plea of title asserting title in himself or some third party under whom he claims and must provide undertaking in amount deemed sufficient to have action certified to federal District Court are mandatory. D.C. Code 1961, § 16-1504. *Mahoney v. Campbell*, 209 A.2d 791, 1965 D.C. App. LEXIS 182 (App. 1965).

**Ejectment.**

Common-law action in ejectment brought by personal representative of decedent's estate to obtain possession of real property from decedent's relatives, who were not tenants, was, as filed, within jurisdiction of Landlord and Tenant Branch of Superior Court. D.C. Code 1981, §§ 16-1501 et seq., 45-1409. *Estate of Ellis* by *Clark v. Hoes*, 677 A.2d 50, 1996 D.C. App. LEXIS 91 (1996).

**Eviction.**

It was the intent of Congress, which directed

enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. U.S. Const. Amends. 1, 5, 14; D.C. Code §§ 16-1501, 45-902, 45-910. *Edwards v. Habib*, 397 F.2d 687, 1968 U.S. App. LEXIS 6913 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 1016, 89 S. Ct. 618, 21 L. Ed. 2d 560, 1969 U.S. LEXIS 2900 (1969).

Tenancy arising from mere possession was not the "tenancy" referred to in Rental Accommodations Act of 1975, and, thus, person merely in possession was not entitled to protection afforded by such Act to renters in regard to evictions by their landlords. D.C. Code §§ 16-1501 to 16-1505, 45-822, 45-1631 to 45-1674, 45-1653(a-c), 45-1661; U.S. Const. Amend. 5. *Simpson v. Jack Spicer Real Estate, Inc.*, 396 A.2d 212, 1978 D.C. App. LEXIS 583 (1978).

Decision abolishing previously recognized right of landlords to use self-help eviction remedy would be given partial retroactive effect, i.e., would be applied to instant parties, as well as prospective application. (Per Mack, A. J., with four Judges concurring.) D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

A summary proceeding, provided for in this section is the exclusive way to evict roomers without giving rise to a cause of action in tort. *Samuel v. King*, 118 WLR 2753 (Super. Ct. 1990).

### Jury trial.

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. U.S. Const. Amend. 7; D.C. Code §§ 11-102, 13-702, 16-1124, 16-1501 to 16-1505, 16-1504, 16-1901 to 16-1909; District of Columbia Court Reform and Criminal Procedure Act of 1970, § 142(5)(A), 84 Stat. 552; 18 U.S.C. §§ 2254, 2255. *Pernell v. Southall Realty*, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198, 1974 U.S. LEXIS 130 (U.S. Dist. Col. 1974).

There is no right to a jury trial under District of Columbia statute in action for possession of leased land. D.C. Code § 16-1501. *Amberger & Wohlfarth, Inc. v. District of Columbia*, 300 A.2d 460, 1973 D.C. App. LEXIS 226 (1973).

In a suit for summary possession, a defense based on housing regulations raises no issue as to which Seventh Amendment preserves right to a trial by jury. D.C. Code § 16-1501; U.S. Const. Amend. 7. *Pernell v. Southall Realty*, 294 A.2d 490, 1972 D.C. App. LEXIS 250 (1972),

reversed by 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198, 1974 U.S. LEXIS 130 (1974).

### Parties.

Even though title to property involved in possessory action had been acquired after commencement of the suit by a person who was not a party thereto, the case was not moot where serious questions were presented which affect all defendants financially unable to post the "undertaking" required to plead title as a defense to a possessory action. D.C. Code § 16-1504. *Thompson v. Mazo*, 421 F.2d 1156, 1970 U.S. App. LEXIS 11265 (C.A.D.C. 1970).

Even though property involved in possessory action and to which defendant pleaded title was owned by person not a party who acquired title on foreclosure of second deed of trust after commencement of possessory action, case was not moot in the view of fact that judgment awarding possession to plaintiff might affect defendant's liability for rent during period of her occupancy and plaintiff's liability for rents collected thereafter. D.C. Code § 16-1504. *Thompson v. Mazo*, 421 F.2d 1156, 1970 U.S. App. LEXIS 11265 (C.A.D.C. 1970).

The factors considered in determining whether an occupant has exclusive possession, and whether he is thus a tenant, rather than a roomer, include: (1) whether the owner provided furnishings, linens, towels, and daily maid service to the occupant; (2) the owner's right to access the room; (3) the number of rooms provided; (4) the scheduled interval for payment (e.g., daily, weekly, monthly); (5) the substance of the contract between the owner and the occupant; and (6) any other conditions of occupancy. *Harkins v. Win Corp.*, 771 A.2d 1025, 2001 D.C. App. LEXIS 101 (2001), modified and rehearing denied by 777 A.2d 800, 2001 D.C. App. LEXIS 166 (D.C. 2001).

Receiver which had been appointed for several apartment buildings pursuant to Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, due to landlord's failure to pay utility bills, could institute summary suit for possession in landlord and tenant branch of the superior court in order to obtain rental payments from tenants, but only if landlord was joined as indispensable party-plaintiff. D.C. Code 1981, §§ 16-1501, 16-1503, 43-543, 43-543(a)(4); Civil Rule 19(a). *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812, 1983 D.C. App. LEXIS 525 (1983).

### Possession.

Since landlord would not be in a position to rent unit to a paying tenant if litigation was permitted to continue with no funds in registry and with tenant on premises and would continue to be deprived of funds which he might well need to pay his mortgage and to maintain other units, and tenant would be affected only



insofar as he was precluded from continuing to live in a unit for which he was demonstrably unable to pay rent, landlord was entitled to possession of premises for failure to make one or more payments required by protective order, and tenant was not deprived of due process by disposition of claim on merits without a hearing. D.C. Code 1973, §§ 16-1501 et seq., 45-901 et seq.; U.S. Const. Amend. 5. *Mahdi v. Poretsky Management, Inc.*, 433 A.2d 1085, 1981 D.C. App. LEXIS 335 (1981).

One motivation for providing summary possessory action for landlord was to avoid resort to self-help and force, condoned at common law. D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Even if title could have been made issue in action by alleged daughter of deceased former property owner to recover possession of the property from decedent's sister, mere assertion in sister's answer and at trial that daughter was not established owner of the premises was not sufficient to prevent Landlord and Tenant Branch of Court of General Sessions from deciding issue of possession. D.C. Code 1961, §§ 11-961, 16-1504. *Mahoney v. Campbell*, 209 A.2d 791, 1965 D.C. App. LEXIS 182 (App. 1965).

In landlord's action for possession of leased premises and for money judgment for rent, exclusion of testimony of oral agreement to repair, made before signing of lease, was error, since violation of such agreement would have constituted an equitable defense. D.C. Code 1940, §§ 13-214, 16-1901, 16-1903. *Mitchell v. David*, 51 A.2d 375, 1947 D.C. App. LEXIS 115 (Cr.App. 1947).

### Remedies.

Under District of Columbia law, lessor was not precluded from seeking damages under the terms of a commercial lease upon the termination of the lease for nonpayment of rent; the termination of the leasehold interest did not have the effect of rendering the damages provision of the lease inoperable or limit the unexpired term for which damages were available to the five-day notice period. D.C. Code 1981, §§ 16-1501, 45-2551(b). *Lennon v. United States Theatre Corp.*, 920 F.2d 996, 1990 U.S. App. LEXIS 21002 (C.A.D.C. 1990).

Authority to limit possessory relief within court's jurisdiction, i.e., giving tenant a power to avoid eviction conditional on payment of money, does not establish a right to provide relief to landlord outside court's jurisdiction. D.C. C.E. §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

If a tenant is ready to yield possession that gives landlord all relief he sought in possessory action, it is neither good administration nor

just to require that proceeding be delayed or protracted so as to litigate issue of rent; that issue should be litigated separately, and de novo, according to notice provided by law for personal actions for rent due. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Although, in order to find that landlord was entitled to possession of premises for nonpayment of rent, court had to find that tenant owed landlord some rent, where court had only a collateral or incidental interest in any consideration of how much rent was due, and had no jurisdiction, in absence of personal service of process, to enter a judgment for landlord for amount of rent due, so that issue of rent is not genuinely before court, court could not be said to have "decided" question for purposes of raising a later estoppel, and tenant was not collaterally estopped from litigating issue of rent in subsequent action by landlord to recover rent. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Once suit for possession is final, claim for rent may not be subsequently added. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

When claim for rent in arrears is added to complaint for possession, tenant will be allowed to assert a counterclaim. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Where numerous other remedies were available to landlord, grant of preliminary injunction which prohibited tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord was improper even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. D.C. Code §§ 16-1501 to 16-1505, 45-910, 45-911, 45-915, 45-916. *Dorfmann v. Boozer*, 414 F.2d 1168, 1969 U.S. App. LEXIS 11940 (C.A.D.C. 1969).

Where patient who was in need of nursing rather than constant medical care refused to leave hospital and her husband who was capable of paying for hospital care desired for her to remain in hospital for remainder of her life, action to enjoin the patient's continuing trespass could be maintained since action for damages, action of ejectment and action for forcible entry and detainer were not adequate remedies. D.C. Code § 16-1501 et seq. *Lucy Webb Hayes Nat'l Training School v. Geoghegan*, 281

F. Supp. 116, 1967 U.S. Dist. LEXIS 7570 (D.D.C.1967).

Transient-accommodation provider could utilize self-help as alternative means of evicting roomer for non-payment of weekly occupancy charge; provider was not required to pursue judicial possessory action. *Harkins v. Win Corp.*, 771 A.2d 1025, 2001 D.C. App. LEXIS 101 (2001), modified and rehearing denied by 777 A.2d 800, 2001 D.C. App. LEXIS 166 (D.C. 2001).

Right-to-enter provision in lease did not relieve lessor of obligation to comply with statutory remedies [D.C. Code 1981, §§ 16-1501, 45-1410], where resident discontinued rent payments due to former lessee's claim to premises. *Simpson v. Lee*, 499 A.2d 889, 1985 D.C. App. LEXIS 521 (1985).

Legislatively created remedies for reacquiring possession are exclusive in their application to commercial tenancies as well as residential tenancies, and landlord's common-law right of self-help no longer exists. D.C. Code 1981, §§ 16-1501, 45-1410. *Simpson v. Lee*, 499 A.2d 889, 1985 D.C. App. LEXIS 521 (1985).

Power of court to assess amount of rent owed in summary possessory action does not give rise to an expanded authority simultaneously to adjudicate all conflicting claims between landlord and tenant. D.C. Code SCR, LT Rule 5(b); D.C. Code §§ 16-1501 to 16-1503, 45-910. *Winchester Management Corp. v. Staten*, 361 A.2d 187, 1976 D.C. App. LEXIS 323 (1976).

Where complaint for possession of premises did not allege type of tenancy, total rent due and owing or period during which rent was in default, and defendant testified that she never saw complaint and filed motion to vacate default judgment 17 days after answer had been due and defendant testified that she was common-law wife of defendant and had been living in premises for number of years, default judgment would be vacated. D.C. Code General Sessions Court Rules, § 1, rule 60(b)(1, 3, 4); D.C. Code § 16-1502. *Bevins v. Lewis*, 254 A.2d 404, 1969 D.C. App. LEXIS 262 (App. 1969).

#### Review.

If appeals court is of the opinion that grant of summary or other judgment for landlord suing for possession is erroneous on its face, it may

dissolve order for prepayment of rent on motion for summary reversal or stay or other seasonable motion. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Where plaintiff in possessory action chose court of general sessions as his forum, and general sessions judge had struck defendant's plea of title, failure of defendant to seek review of district court's dismissal of his suit for reconveyance as moot in light of the general session's judgment did not preclude appeal from decision of District of Columbia Court of Appeals affirming judgment of court of general sessions even though decision of district court, had it reached the merits, would have involved same questions which defendant sought to have litigated by pleading title in the possessory suit. D.C. Code § 16-1504. *Thompson v. Mazo*, 421 F.2d 1156, 1970 U.S. App. LEXIS 11265 (C.A.D.C. 1970).

#### Stay of execution.

Even when no money judgment is sought in suit for possession, court is required to make determination of amount of arrears to provide tenant opportunity to stay enforcement of any judgment for possession through exercise of his equitable right of redemption. D.C. Code 1981, § 16-1501. *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812, 1983 D.C. App. LEXIS 525 (1983).

Fact that a low income tenant of National Capital Housing Authority may suffer undue hardship if judgment for possession is executed cannot afford basis for stay of execution in possessory action if full tender is not made first. D.C. Code §§ 5-103a, 16-1501 et seq. *National Capital Housing Authority v. Douglas*, 333 A.2d 55, 1975 D.C. App. LEXIS 329 (1975).

All accrued and overdue rent must be unconditionally tendered before any stay of execution in summary possessory action can issue; thus, trial court had no discretion to stay judgment for summary possession for two years on condition that tenant pay accrued and overdue rent in monthly installments over such period in addition to such rent as would be regularly due by reason of continuing occupancy. D.C. Code §§ 5-103a, 16-1501 et seq. *National Capital Housing Authority v. Douglas*, 333 A.2d 55, 1975 D.C. App. LEXIS 329 (1975).

## § 16-1502. Service of summons.

The summons provided for by section 16-1501 shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual



possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read. If the summons is posted on the premises, a copy of the summons shall be mailed first class U.S. mail, postage prepaid, to the premises sought to be recovered, in the name of the person known to be in possession of the premises, or if unknown, in the name of the person occupying the premises, within 3 calendar days of the date of posting.

(Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1; June 29, 1984, D.C. Law 5-90, § 2(b), 31 DCR 2537.)

**Prior Codifications.** — 1981 Ed., § 16-1502.

1973 Ed., § 16-1502.

**Legislative history of Law 5-90.** — For legislative history of D.C. Law 5-90, see Historical and Statutory Notes following § 16-1501.

### CASE NOTES

#### ANALYSIS

Posting of summons.  
Service of summons.

#### Posting of summons.

Service of process by posting on door of tenant, who was overseas, was inadequate as a matter of law, and thus, underlying judgment granting her landlord possession of her apartment for certain alleged occupancy violations, including habitual late payment of rent, was void; although summons was served by special process server by posting on tenant's door following two unsuccessful attempts to serve tenant personally, and copy of summons was mailed to tenant at unit address two days later, no representative of landlord attempted to contact tenant at international telephone number that she had provided. *Edelhoff v. Shakespeare Theatre at the Folger Library, Inc.*, 884 A.2d 643, 2005 D.C. App. LEXIS 507 (2005).

It is prerequisite to posting that diligent and conscientious effort be made by process server to either find tenant to effect personal service in eviction action or to leave copy of summons with person residing on or in possession of premises, even though statute addressing service of process does not expressly so require. *Jones v. Hersh*, 845 A.2d 541, 2004 D.C. App. LEXIS 78 (2004).

After personal service could not be accomplished on tenant in landlord's action for possession, posting of the complaint and summons, followed by first-class mailing to the tenant's address, was proper. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

Diligent and conscientious effort by process server to find tenant to effect personal service or to leave copy of summons with person residing on or in possession of premises is prerequisite to service in eviction action by posting copy

of summons on premises. D.C. Code 1981, § 16-1502. *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

Requirements of Landlord and Tenant Rule 4, that where service of process is made by posting, return of service shall be made in the form of Landlord and Tenant Form 3 and Form 3 requirement that process server affidavit set forth specific facts from which court can determine that process was properly served, are clear, definite and unambiguous. D.C. Code 1981, § 16-1502. *Alexander v. Polinger Co.*, 496 A.2d 267, 1985 D.C. App. LEXIS 443 (1985).

Returns did not comply with Landlord and Tenant Rule 4, which requires that return of service be in the form of Landlord and Tenant Form 3, which directs process server by affidavit to set forth specific facts from which the court can determine that process was properly served, where returns failed to recite particular details of efforts to make personal service, even though returns stated that having attempted with due diligence and failed to effect service personally or upon person of suitable discretion residing in said premises, process had been served by posting. D.C. Code 1981, § 16-1502. *Alexander v. Polinger Co.*, 496 A.2d 267, 1985 D.C. App. LEXIS 443 (1985).

Clear and convincing proof was required, upon motion to vacate default judgments for landlord in actions for possession, in order to rebut presumption of verity of facts stated in process servers' returns, which indicated that summons and complaints had been served upon tenants by posting, having attempted with due diligence and failed to effect service upon defendants personally or upon person of suitable discretion above the age of 16 years residing on or in said premises, even though returns did not contain requisite statement setting forth specific facts from which court

could determine that process was properly served as indicated. Landlord and Tenant Rule 4; Form 3; D.C. Code 1981, § 16-1502. *Alexander v. Polinger Co.*, 496 A.2d 267, 1985 D.C. App. LEXIS 443 (1985).

Absent evidence showing that process servers made inadequate efforts to effect personal service on tenants, fact that returns failed to set forth requisite specific facts from which the court could determine that process was properly served was insufficient to rebut presumption that returns were valid, so as to compel vacating default judgments for possession, where returns stated that having attempted with due diligence and failed to effect service upon tenants personally or upon person of suitable discretion above the age of 16 years residing on or in said premises, process was served by posting copy of complaint in summons on the door of the premises where it could be conveniently read. Landlord and Tenant Rules 4, 11; Form 3; D.C. Code 1981, § 16-1502; Civil Rule 60(b)(4). *Alexander v. Polinger Co.*, 496 A.2d 267, 1985 D.C. App. LEXIS 443 (1985).

The totality of circumstances from which it is determined whether special process server made diligent and conscientious effort to effect personal or substituted service before posting does not include knowledge of process server that attempts in prior cases to serve same defendant had been fruitless. D.C. Code 1973, § 16-1502. *Parker v. Frank Emmet Real Estate*, 451 A.2d 62, 1982 D.C. App. LEXIS 440 (1982).

Special process server, who effected service by posting on apartment door after one visit, failed to make required diligent and conscientious effort to effect personal or substituted service before posting. D.C. Code 1973, § 16-1502. *Parker v. Frank Emmet Real Estate*, 451 A.2d 62, 1982 D.C. App. LEXIS 440 (1982).

Service of summons and complaint, which was made in action by landlord for possession of premises leased by tenant for failure to pay rent, and which was accomplished by posting when neither tenant nor a person above the age of 16 years was found in possession of or residing on premises, was not inappropriate and did not constitute a denial of due process, even though a resident manager and a desk clerk were present in apartment house when service was made, where service was reasonably calculated to give tenant notice of pending action and it was unreasonable to suggest that resident manager was a person residing on or in possession of premises for purpose of service. D.C. Code § 16-1502. *Westmoreland v. Weaver Bros., Inc.*, 295 A.2d 506, 1972 D.C. App. LEXIS 262 (1972).

While validity of service by posting depends on process server first making a diligent and conscientious attempt to effect personal or sub-

stituted service, it is an unreasonable construction of posting statute to suggest that a resident manager of a large apartment building, who is employed by landlord, is a person residing on or in possession of premises for purpose of service of a landlord and tenant complaint. D.C. Code § 16-1502. *Westmoreland v. Weaver Bros., Inc.*, 295 A.2d 506, 1972 D.C. App. LEXIS 262 (1972).

Landlord's service by posting and mailing was valid under statute governing service of process in landlord and tenant actions to recover possession of real property, where landlord's process server made diligent and conscientious attempts at personal service at 9:33 a.m. on a Tuesday and at 6:05 p.m. on the following Monday before landlord resorted to service by posting and mailing. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

Landlord's service by posting and mailing was not valid under statute governing service of process in landlord and tenant actions to recover possession of real property, where landlord's process server only made attempts at personal service on successive Saturdays before landlord resorted to service by posting and mailing. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

Landlord's service by posting and mailing was not valid under statute governing service of process in landlord and tenant actions to recover possession of real property, where landlord failed to present any evidence that its process server had reasonable basis upon which to believe that tenant was likely to be at home during traditional working hours on weekdays, when only attempts at personal service were made. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

Landlord's service by posting and mailing was not valid under statute governing service of process in landlord and tenant actions to recover possession of real property, where landlord failed to present any evidence that its process server had reasonable basis upon which to believe that tenant was likely to be at home on weekends, when only attempts at personal service were made. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

Landlord's service by posting and mailing was valid under statute governing service of process in landlord and tenant actions to recover possession of real property, where landlord's process server made diligent and conscientious attempts at personal service once during traditional working hours on a weekday and once not before landlord resorted to service by posting and mailing. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

#### **Service of summons.**

Tenant's claim that he had not received actual notice of landlord's action for possession of



premises until he was evicted was not inherently incredible nor contested by landlord, and thus tenant was entitled to evidentiary hearing on issue of actual notice, as a factor in determining tenant's motion to vacate default judgment of possession, under catchall provision of rule governing relief from judgment; although process server had attempted personal service before effecting service by posting and mail, tenant continued to pay rent until he was evicted, allegedly in an amount sufficient to avoid eviction. *Carrasco v. Thomas D. Walsh, Inc.*, 988 A.2d 471, 2010 D.C. App. LEXIS 20 (2010).

Service of process in landlord's action for possession of premises was sufficient, and thus default judgment entered against tenant was not required to be vacated for lack of effective service process, even if tenant never actually received notice of the action, where process server unsuccessfully attempted personal service on more than one occasion before resorting to posting and mailing. *Carrasco v. Thomas D. Walsh, Inc.*, 988 A.2d 471, 2010 D.C. App. LEXIS 20 (2010).

Service of process was valid in landlord's action against tenant seeking possession of landlord's real property, where process server went to property sought to be recovered, found that tenant was not there, and delivered summons and complaint to tenant's niece, who was above age of 16 years and who was residing at property. *Jones v. Hersh*, 845 A.2d 541, 2004 D.C. App. LEXIS 78 (2004).

Tenant was properly served with summons and complaint for possession of real property; process server went to premises to serve tenant with summons and complaint and, after being informed that tenant was out of state and that tenant's employee was authorized to receive service, summons and complaint were left with employee. D.C. Code 1989, § 16-1502.

*Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

On motion to vacate default judgment for possession of unit in housing authority project due to nonpayment of rent, in order to exercise properly its discretion as to whether to vacate the default judgment, it was incumbent upon court to hear and assess testimony of tenant who asserted she did not receive summons and complaint and had no knowledge of the action until she received the writ of restitution, and case would be remanded for further proceedings. D.C. Code General Sessions Court Rules, § 1, rule 60(b); D.C. Code § 16-1502. *Eaddy v. United States*, 276 A.2d 232, 1971 D.C. App. LEXIS 271 (1971).

Process server who has no information about a tenant's schedule and takes no steps to learn any such information makes a "diligent and conscientious" effort to effect personal service, for purposes of statute governing service of process in landlord and tenant actions to recover possession of real property, only if he makes at least two attempts at personal service on different days of the week and at substantially different times of the day. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

Process server who fails to explain why he made his attempts at personal service at the times he made them satisfies his burden of proving that he has been diligent and conscientious in seeking to effect personal service, for purposes of statute governing service of process in landlord and tenant actions to recover possession of real property, only if he has made at least two of the following four categories of days and times: (1) weekdays between 8:00 a.m. and 6:00 p.m.; (2) weekdays before 8:00 a.m.; (3) weekdays after 6:00 p.m.; and (4) weekends. *Capitol City Properties v. Watts*, 132 WLR 2417 (Super. Ct. 2004).

## § 16-1503. Judgment and execution for possession.

When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

(Dec. 23, 1963, 77 Stat. 581, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1503.

1973 Ed., § 16-1503.

## CASE NOTES

## ANALYSIS

Construction and application.

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Rent.

**Construction and application.**

Purpose of District of Columbia statutes governing summary proceedings by landlord to regain possession of premises is to provide court relief to landlord, otherwise trapped by relatively slow, fairly complex and substantially expensive procedure of the common-law possessory action of ejectment, to avoid resort to self-help and force, condoned at common law as justified, and to permit an expeditious judicial determination of what remains in possessory action. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

**Costs.**

Where plaintiffs brought action in District of Columbia court of general sessions for possession of realty, and defendants claimed title to realty and filed a \$1,250 title bond under District of Columbia statute to pay all intervening damages and costs and reasonable intervening rent for premises, and case was certified to United States District Court for District of Columbia for determination of title issue, and defendants remained in possession for about 2 years, and reasonable rent for realty was \$140 per month, and district court found title in plaintiffs, plaintiffs were entitled to recover full bond amount of \$1,250 and were not limited to nominal damages. D.C. Code § 16-1504; U.S. Dist. Ct. Rules, Dist. of C. rule 5, 5(d). *Scheve v. Hollins*, 403 F.2d 566, 1968 U.S. App. LEXIS 5865 (C.A.D.C. 1968).

Eviction for failure to cure rent default could not be based on lessee's failure to pay a postjudgment cost incurred by lessor, where lessor never sought court award for cost or to have cost taxed by clerk of court. *Johnson v. Edgewood Management Corp.*, 512 A.2d 287, 1986 D.C. App. LEXIS 365 (1986).

Principles that equitable defense may be interposed in all actions at law, that mutual debts and claims under contract between parties to common-law action may be set off against each other and that where claim of set-off is made, judgment must be rendered for balance found due whether to plaintiff or defendant with costs, apply to landlord and tenant actions in Municipal Court in District of Columbia. D.C. Code 1940, §§ 13-214, 16-1901, 16-1903. *Mitchell v. David*, 51 A.2d 375, 1947 D.C. App. LEXIS 115 (Cr.App. 1947).

**Jurisdiction.**

Authority to limit possessory relief within

court's jurisdiction, i.e., giving tenant a power to avoid eviction conditional on payment of money, does not establish a right to provide relief to landlord outside court's jurisdiction. D.C. C.E. §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Power of court to assess amount of rent owed in summary possessory action does not give rise to an expanded authority simultaneously to adjudicate all conflicting claims between landlord and tenant. D.C. Code SCR, LT Rule 5(b); D.C. Code §§ 16-1501 to 16-1503, 45-910. *Winchester Management Corp. v. Staten*, 361 A.2d 187, 1976 D.C. App. LEXIS 323 (1976).

**Parties.**

Receiver which had been appointed for several apartment buildings pursuant to Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, due to landlord's failure to pay utility bills, could institute summary suit for possession in landlord and tenant branch of the superior court in order to obtain rental payments from tenants, but only if landlord was joined as indispensable party-plaintiff. D.C. Code 1981, §§ 16-1501, 16-1503, 43-543, 43-543(a)(4); Civil Rule 19(a). *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812, 1983 D.C. App. LEXIS 525 (1983).

**Rent.**

Although, in order to find that landlord was entitled to possession of premises for nonpayment of rent, court had to find that tenant owed landlord some rent, where court had only a collateral or incidental interest in any consideration of how much rent was due, and had no jurisdiction, in absence of personal service of process, to enter a judgment for landlord for amount of rent due, so that issue of rent is not genuinely before court, court could not be said to have "decided" question for purposes of raising a later estoppel, and tenant was not collaterally estopped from litigating issue of rent in subsequent action by landlord to recover rent. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

If a tenant is ready to yield possession that gives landlord all relief he sought in possessory action, it is neither good administration nor just to require that proceeding be delayed or protracted so as to litigate issue of rent; that issue should be litigated separately, and de novo, according to notice provided by law for personal actions for rent due. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).



Protective purpose of requiring tenant who has asked for jury trial or asserted defense based on violations of housing code to landlord's complaint for possession to prepay rent will be served by requiring only future payments falling due after date order is issued to be paid into the court registry, and payment of back rent alleged to be due should not be required. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Protective order requiring tenant who asked for jury trial or asserted a defense based on violations of housing code to landlord's complaint for possession to pay future rent payments falling due into court registry may issue only when landlord has demonstrated an obvious need for such protection, and right to protective order is to be adjudged independently of right to jury trial and right to proceed in forma pauperis. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

If at conclusion of trial on landlord's complaint for possession either party seeks to show, for purpose of disposition of escrow fund created by tenant's prepayment of rent during litigation period, that condition of premises changed during litigation period, either party should be permitted to amend complaint or answer to alleged change in condition, and finder of facts should make separate finding as to condition of premises at time at which amendment was filed. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

If at conclusion of proceeding on landlord's complaint for possession it is determined that housing code violations have nullified obligation of tenant to pay any rent for period at issue, and tenant has been ordered to make prepayment of rent during pendency of litigation, tenant may recover fund on the assumption that, absent convincing proof from the landlord, housing code violations sufficient to nullify obligation to pay rent have continued. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

If tenant who has been required to prepay rent during litigation on landlord's complaint for possession abandons premises before case goes to trial, money paid into court by tenant should be returned to the tenant unless landlord promptly goes to court to seek money judgment for rent actually due during period rent was being paid into court. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a);

D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Although tenant who has asked for jury trial or asserted defense based on violations of housing code to landlord's complaint for possession and who has been ordered to prepay rent into registry of court will ordinarily be called upon to pay the amounts which he originally contracted to pay as rent, trial court may consider imposition of a lesser amount when tenant makes strong showing that condition of dwelling is in violation of housing regulations or that landlord has not acted upon order to repair within reasonable time. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Although court may, in exercise of its equitable jurisdiction, order that future rent be paid into registry of court as it becomes due during pendency of litigation, such prepayment is not favored and should be ordered only when tenant has either asked for jury trial or asserted a defense based on violations of the housing code, and only upon motion of the landlord and after notice and opportunity for oral argument by both parties. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

If trial of landlord's complaint for possession results in determination that portion of rent prepaid by tenant during pendency of litigation is owing landlord, that same proportion may be applied in dividing funds between landlord and tenant. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Where tenant has been required to make payments into registry of court pending disposition of landlord's complaint for possession, after conclusion of litigation trial court may properly find amount of rent in arrears, even when suit is not for back rent, and if landlord is exonerated of all housing code violations fund may be paid to landlord as rental for the litigation period, but the prepayment fund should not be applied directly against unpaid rent even if only de minimis violations existed during period at issue. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Even if default judgment is entered in landlord's suit for possession where tenant has paid future rent into court, judgment is not res judicata for the amount of rent actually due during period rent was paid into court. D.C. Code General Sessions Court Rules, § 2, rules

3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

In making determination of need to protect landlord suing for possession by requiring tenant who has asked for jury trial or asserted defense based on violations of housing code to pay future rental payments into court registry, court may properly consider amount of rent alleged to be due, number of months landlord has not received even a partial rental payment, reasonableness of rent for premises, amount of landlord's monthly obligations for the premises, whether tenant has been allowed to proceed in forma pauperis, and whether landlord faces substantial threat of foreclosure. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Need of landlord for protective order requiring tenant who has asked for jury trial or asserted defense based on violations of housing

code to landlord's complaint for possession to pay rental payments into registry of court must be compared with apparent merits of defense based on housing code violations and relevant considerations would be whether housing violations alleged are de minimis or substantial, whether landlord has been notified of existence of defects and, if so, his response to that notice, and the date, if known, of the last repair or renovation relating to the alleged defect. D.C. Code General Sessions Court Rules, § 2, rules 3, 7(a); D.C. Code § 16-1502. *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 1970 U.S. App. LEXIS 8636 (C.A.D.C. 1970).

Implicit in District of Columbia statute dealing with summary action for possession of realty is right of successful plaintiff to obtain recovery of mesne profits as adjunct to proceeding for determining title and possession. D.C. Code § 16-1504. *Scheve v. Hollins*, 403 F.2d 566, 1968 U.S. App. LEXIS 5865 (C.A.D.C. 1968).

## § 16-1504. Certification to District Court upon plea of title; undertaking [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(2).)

**Prior Codifications.** — 1981 Ed., § 16-1504.

## § 16-1505. Conclusiveness of judgment.

A judgment of the Superior Court of the District of Columbia in a proceeding pursuant to this chapter is not a bar to any afteraction brought by either party, and does not conclude any question of title between them, where title is not pleaded by the defendants.

(Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(g)(1).)

**Prior Codifications.** — 1981 Ed., § 16-1505.

1973 Ed., § 16-1505.

### CASE NOTES

#### ANALYSIS

Jury trial.  
Remedies.

#### Jury trial.

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing

summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. U.S. Const. Amend. 7; D.C. Code §§ 11-102, 13-702, 16-1124, 16-1501 to 16-1505, 16-1504, 16-1901 to 16-1909; District of Columbia Court Reform and Criminal Procedure Act of 1970, § 142(5)(A), 84 Stat. 552; 18 U.S.C. §§ 2254, 2255. *Pernell v. Southall Realty*, 416 U.S. 363,



94 S. Ct. 1723, 40 L. Ed. 2d 198, 1974 U.S. LEXIS 130 (U.S. Dist. Col. 1974).

**Remedies.**

Where numerous other remedies were available to landlord, grant of preliminary injunction which prohibited tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which

directed rentals deposited to be paid into court for delivery to landlord was improper even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. D.C. Code §§ 16-1501 to 16-1505, 45-910, 45-911, 45-915, 45-916. *Dorfmann v. Boozer*, 414 F.2d 1168, 1969 U.S. App. LEXIS 11940 (C.A.D.C. 1969).

CHAPTER 17. GAMING TRANSACTIONS.

Sec.

16-1701. Invalidity of gaming contracts.

16-1702. Recovery of losses at gaming.

16-1703. Relief from further penalty upon discovery and repayment of losses.

Sec.

16-1704. Cheating at gambling.

§ 16-1701. Invalidity of gaming contracts.

(a) A thing in action, judgment, mortgage, or other security or conveyance made and executed by a person in which any part of the consideration is for money or other valuable things won by playing at any game whatsoever, or by betting on the sides or hands of persons who play, or for the reimbursement or payment of any money knowingly lent or advanced for the purpose, or lent or advanced at the time and place of the play or bet, to a person so playing or betting or who, during the play, so plays or bets, is void except as provided by subsection (b) of this section.

(b) If the mortgage, security, or other conveyance affects real property, it shall inure to the sole benefit of, and devolve upon, the persons who might have, or be entitled to, the property, as if the person who executed the instrument had died immediately after its execution, or as if the instrument had been made to the persons so entitled after the death of the person who executed it. A grant or conveyance made for the purpose of preventing the real property from coming to, or devolving upon, the persons intended by this section to enjoy the property as herein provided is fraudulent and void.

(c) This section does not affect the validity of negotiable instruments embraced by subtitle I of Title 28.

(Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1; Apr. 30, 1988, D.C. Law 7-104, § 4(n), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-1701.

1973 Ed., § 16-1701.

**Legislative history of Law 7-104.** — For

legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-1311.

CASE NOTES

ANALYSIS

Construction and application.

Lotteries.

Remedies.

Review.

**Construction and application.**

This section applies to bets lawfully placed with the District of Columbia lottery. *Persall v. Alexander*, 115 WLR 1521 (Super. Ct. 1987).

**Lotteries.**

Agreement to share proceeds of winning lottery ticket did not run afoul of either statute that invalidated contracts in which party agreed either to pay something to another as

result of losing a game or bet or to repay money knowingly advanced or lent for purpose of gambling or public policy underlying statute where lottery in question was legal. *D.C. Code* 1981, § 16-1701. *Pearsall v. Alexander*, 572 A.2d 113, 1990 D.C. App. LEXIS 62 (1990).

**Remedies.**

Even if checks drawn from cash management account would not be directly enforceable in District of Columbia, drawer did not suffer an actual loss that would be actionable against drawee for its mistakenly paying checks, upon which stop payment orders were placed, to casino to pay for drawer's legal gambling in New Jersey, where casino and drawee, as sub-



rogee of casino, could bring action to recover on the checks in either Maryland, where drawer resided, or New Jersey. D.C. Code 1981, §§ 16-1701(a), 28:3-308(b), 28:4-403(a, c), 28:4-407, 28:4-414(b). *Seigel v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 745 A.2d 301, 2000 D.C. App. LEXIS 21 (2000).

proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. D.C. Code 1951, § 16-1701 et seq. *Stern v. Stern Co. of Washington, D.C.*, 200 F.2d 364, 1952 U.S. App. LEXIS 2300 (C.A.D.C. 1952).

#### **Review.**

Where the trial court found no impropriety in

### **§ 16-1702. Recovery of losses at gaming.**

A person who, at any time or sitting, by playing at cards, dice or any other game, or by betting on the sides or hands of persons who play, loses to a person so playing or betting, a sum of money, or other valuable thing, amounting to \$25 or more, and pays or delivers the money or thing, or any part thereof, may, within three months after the payment or delivery, sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with costs. If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 582, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1702. 1973 Ed., § 16-1702.

### **§ 16-1703. Relief from further penalty upon discovery and repayment of losses.**

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16-1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1703. 1973 Ed., § 16-1703.

### **§ 16-1704. Cheating at gambling.**

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of \$25, shall, upon conviction of the offense,

**§ 16-1704** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16-1702.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

**Cross references.** — Indigents, representation in criminal cases, see § 11-2601.  
Superior Court, civil jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-1704.  
1973 Ed., § 16-1704.



## CHAPTER 19. HABEAS CORPUS.

Sec.	Sec.
16-1901. Petition; issuance of writ.	16-1906. Inquiry into cause of detention; bail; bond.
16-1902. Service of writ; return.	16-1907. Traversing return; pleading; witnesses.
16-1903. Suspected evasion or disobedience of writ; procedure.	16-1908. Right of other persons to writ.
16-1904. Forfeiture and penalty for failure to produce.	16-1909. Construction of chapter.
16-1905. Right to copy of commitment; forfeiture.	

## § 16-1901. Petition; issuance of writ.

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is returnable forthwith before the court or judge.

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(h)(1).)

**Cross references.** — Mentally retarded persons' rights, see § 7-1301.02 and 7-1301.03.

Representation of indigents in criminal cases, see § 11-2601.

**Prior Codifications.** — 1981 Ed., § 16-1901.  
1973 Ed., § 16-1901.

## CASE NOTES

## ANALYSIS

Availability of remedies.  
Burden of proof.  
Construction and application.  
Custodians.  
Federal officers.  
Harmless or reversible error.  
Jurisdiction.  
Review.

**Availability of remedies.**

A habeas petition cannot be entertained with respect to matters cognizable under motion to vacate sentence unless the motion has been made or unless it appears that the remedy by motion would be inadequate to test the legality of the detention. 18 U.S.C. § 2255; D.C. Code §§ 11-502, 16-1901. *McCall v. Swain*, 510 F.2d

167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

When a felony offender convicted in Superior Court of District of Columbia attacks legality of parole revocation decision made by United States Parole Commission, offender is not required first to exhaust his remedies in Superior Court before seeking federal habeas corpus relief; alleged due process violation arises from exercise of federal agency's discretion pursuant to Congressional delegation of power, not as result of state-level court's exercise of judicial power. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

District of Columbia Code offender who was prosecuted in the Superior Court but is detained in that case in a District of Columbia facility as the result of actions by the federal parole authority should be required to exhaust

his District of Columbia habeas remedies before federal district court entertains the challenge to his detention. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

District of Columbia felony offender was entitled to federal habeas relief from revocation of his parole on basis of decision by United States Parole Commission that lacked rational basis for determining that he was in constructive possession of concealed drugs in vehicle in which he was sitting in front passenger seat. *Gant v. Reilly*, 224 F.Supp.2d 26, 2002 U.S. Dist. LEXIS 17144 (2002).

Neither motion to attack sentence nor writ of habeas corpus were appropriate remedies for prisoner's claim that prior robbery conviction as youthful offender should be set aside because D.C. Board of Parole had granted him early discharge but failed to issue certificate; prisoner was not seeking to challenge custody under prior sentence, and setting aside prior conviction would not necessarily reduce sentence petitioner was currently serving in federal prison on subsequent drug charges. *Norris v. United States*, 927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

Defendant was not entitled to vacation of 48-month sentence and resentencing based on claim that Bureau of Prisons (BOP) should have released him to halfway house for last six months of sentence, rather than last ten percent of term; sentencing court did not rely on BOP policy in fashioning sentence, and action taken by BOP was not subject to challenge under motion to vacate. *Knight v. United States*, 892 A.2d 1096, 2006 D.C. App. LEXIS 86 (2006).

Habeas petitioner was not entitled to 25 months of sentence credit on contention that he was mistakenly released into the community after serving prison term in foreign jurisdiction because District of Columbia officials failed to file parole violation warrant as a detainer in foreign jurisdiction; failure to lodge detainer was merely simple neglect, and manner in which petitioner re-entered the District's justice system was inconsistent with notion that he successfully readjusted to the community, as he was arrested and charged with first-degree sexual abuse of a 13-year-old child, an act that he admitted at the parole revocation hearing. *Wells v. United States*, 802 A.2d 352, 2002 D.C. App. LEXIS 378 (2002).

Petitioner was not entitled to writ of habeas corpus, as Board of Parole followed proper procedures in both original revocation hearing, which was convened because petitioner violated two conditions of parole, and in second hearing that was held to consider misconduct related to an intervening murder charge; in original hearing, Board provided notice, advised petitioner of his rights, and provided

counsel, and in second hearing, it was permissible for the Board to consider underlying facts of murder charge, though that charge was dismissed. *Barnes v. District of Columbia Bd. of Parole*, 759 A.2d 1073, 2000 D.C. App. LEXIS 261 (2000).

If, after hearing on petitioner's claim for habeas corpus relief, court determines that petitioner's detention is unlawful, court must grant relief requested in petition, including release or conditional release, if appropriate; however, if detention is lawful, court must deny the requested relief. D.C. Code 1981, § 16-1901. *Bennett v. Ridley*, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

While some delays are inevitable in the transfer of a youthful offender to a certified facility pursuant to the Federal Youth Corrections Act, such delay should not be permitted to become protracted, and if the length of an offender's detention in an adult facility becomes unduly long, the appropriate means of seeking relief is the submission to the trial court of a petition for habeas corpus. D.C. Code § 16-1901; 18 U.S.C. §§ 5010(a, b), 5011. *Austin v. United States*, 299 A.2d 545, 1973 D.C. App. LEXIS 216 (1973).

Habeas corpus is not appropriate means to redress violations of Interstate Agreement on Detainers. *King v. Palmer*, 113 WLR 2437 (Super. Ct. 1985).

### **Burden of proof.**

For a writ of habeas corpus to issue, the inmate must present an allegation and supporting facts which, if borne out by proof, would entitle him to relief. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

The facts set forth in the petition must make a prima facie case for a writ of habeas corpus to issue. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

It is enough if an inmate, on a petition for habeas corpus, presents an allegation and supporting facts which, if borne out by proof, would entitle him or her to relief. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

In order for a writ of habeas corpus to issue, the facts set forth in the petition must make a prima facie case. *Barnes v. District of Columbia Bd. of Parole*, 759 A.2d 1073, 2000 D.C. App. LEXIS 261 (2000).

For writ of habeas corpus to issue, facts set forth in petition must make prima facie case; it is not enough if inmate presents allegation and supporting facts which, if borne out by proof, would entitle him to relief. D.C. Code 1981, § 16-1901. *Bennett v. Ridley*, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

### **Construction and application.**

Inmate imprisoned outside the territorial limits of the District of Columbia was "within



the District" within meaning of D.C. statute permitting habeas corpus petition by prisoner confined within the District; the phrase encompasses individuals confined within the District's correctional facilities located outside the District limits. D.C. Code 1981, § 16-1901. *Blair-Bey v. Quick*, 151 F.3d 1036, 1998 U.S. App. LEXIS 16931 (C.A.D.C. 1998), remanded by 159 F.3d 591, 333 U.S. App. D.C. 1, 1998 U.S. App. LEXIS 26201 (1998).

Writ of habeas corpus ad prosequendum issued by Superior Court for the District of Columbia was issued under the federal All Writs Act rather than under provisions of the District of Columbia Code dealing with writs of habeas corpus so that defendant's confinement in the District of Columbia jail pursuant to the writ of habeas corpus ad prosequendum was a confinement pursuant to "process issued under the laws of the United States." 18 U.S.C. § 751(a); 18 U.S.C. § 1651; D.C. Code § 16-1901. *United States v. Cogdell*, 585 F.2d 1130, 1978 U.S. App. LEXIS 10219 (C.A.D.C. 1978), reversed by 444 U.S. 394, 100 S. Ct. 624, 62 L. Ed. 2d 575, 1980 U.S. LEXIS 69 (1980).

The phrase "within the district" in section of District of Columbia Code providing that person committed, detained, confined, or restrained from his lawful liberties within the District may petition for a writ of habeas corpus does not prohibit a court, whether the district court or the superior court, located in the District from entertaining habeas corpus petitions from individuals confined within the District's correctional facilities located outside the District limits. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Section of District of Columbia Code providing that person committed, detained, confined, or restrained from his lawful liberty within the District may apply by petition to the appropriate court for writ of habeas corpus will not be construed to prevent an individual convicted of federal crimes in the district court from petitioning that court to exercise a continuing supervisory role over his treatment during the period of his incarceration. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

The federal habeas statute is unaffected by the corresponding District of Columbia statute, indicating that petitions directed to persons other than federal officers and employees shall be filed in the Superior Court for the District of Columbia, and thus, habeas petitioners filing in the District of Columbia can assert jurisdiction under the federal statute and file their petition in either the United States District Court for the District of Columbia or the Superior Court. *Bailey v. Quick*, 191 F.Supp.2d 7, 2001 U.S. Dist. LEXIS 22886 (2001).

Overriding intent of Congress in enacting the District of Columbia Court Reform and Criminal Procedure Act of 1970 is to create largely independent local court system. D.C. Code §§ 16-1901, 23-110(d); 18 U.S.C. § 2254(b, c). *Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

Trial court properly considered inmate's motion, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, to be a petition for writ of habeas corpus; in his motion, inmate relied on statute governing writ of habeas corpus as basis for jurisdiction, and inmate alleged that failure of Bureau of Prisons to meet his special educational needs was precluding him from being prepared to take General Educational Development (GED) exam, which deprived him of eligibility for parole. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Habeas corpus reaches not only the fact but also the form of detention. *Coates v. Elzie*, 768 A.2d 997, 2001 D.C. App. LEXIS 63 (2001).

The writ of habeas corpus is an order directing officials holding a prisoner in custody to produce that person before the court for a hearing on his claim for relief. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

The purpose of the writ is to test a prisoner's claim that he or she is being held without right. *Grier v. Palmer*, 113 WLR 2449 (Super. Ct. 1985).

### Custodians.

The presence of custodian of habeas corpus petitioner within the territorial jurisdiction of the District of Columbia is sufficient to satisfy the provision in District of Columbia Code authorizing person restrained within the District to apply for writ of habeas corpus. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Superintendent of District of Columbia reformatory was a "custodian" of petitioner convicted in the United States District Court for the District of Columbia for local crimes and confined in the reformatory pursuant to Attorney General's designation of the reformatory as the appropriate facility in which the sentence was to be served. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Habeas corpus petitions are directed to prisoner's custodian which, in all but extraordinary cases, would be the warden of the facility where

the prisoner is incarcerated. D.C. Code 1981, § 16-1901. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

Director of District of Columbia Department of Corrections was not proper party to habeas corpus proceeding instituted in federal court by inmates who were incarcerated at District of Columbia correctional complex pursuant to sentences imposed by judges of United States District Court for the District of Columbia, as he was not the immediate custodian of the inmates. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901(b, c). *Fitzgerald v. Sigler*, 372 F. Supp. 889, 1974 U.S. Dist. LEXIS 9546 (1974), vacated by 534 F.2d 353, 175 U.S. App. D.C. 151, 1976 U.S. App. LEXIS 12260 (1976).

Once a prisoner's sentence has completely expired, the collateral consequences of a conviction are not sufficient to render the former prisoner in custody for purposes of either a motion attacking sentence or habeas corpus. *Norris v. United States*, 927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

Because the only proper respondent in a habeas corpus action is the officer or other person in whose custody or keeping the petitioner is detained, the Superior Court may not grant habeas corpus relief unless it has personal jurisdiction over the custodian of the prisoner. *Knight v. United States*, 892 A.2d 1096, 2006 D.C. App. LEXIS 86 (2006).

The proper respondent on a petition for habeas corpus relief by an inmate is the warden of the prison in which the inmate is being held. *Knight v. United States*, 892 A.2d 1096, 2006 D.C. App. LEXIS 86 (2006).

Trial court lacked jurisdiction to consider inmate's habeas petition, requesting that court enforce certain treatment under the Youth Rehabilitation Act on his behalf, under statute governing writ of habeas corpus; only proper respondent in habeas action was inmate's custodian, trial court did not have personal jurisdiction over custodian for inmate who was housed outside of district, and thus, court lacked jurisdiction to hear case since inmate's custodian was not located within district. *United States v. Crockett*, 861 A.2d 604, 2004 D.C. App. LEXIS 616 (2004).

The only proper respondent in a habeas corpus action brought by a prisoner is the prisoner's custodian, which is usually the warden of the institution in which the prisoner is incarcerated. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Director of the District of Columbia Department of Corrections was not a proper respondent in prisoner's habeas corpus action that sought his immediate release on parole, as Director was not prisoner's custodian since prisoner was incarcerated in a facility owned and operated by commonwealth of Virginia, and thus Superior Court lacked jurisdiction

over Director and could not grant habeas relief. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Attorney General of the United States was not a proper respondent in prisoner's habeas corpus action that sought his immediate parole release from a non-District correctional facility, even though statutory provision indicated that prisoners were committed to the custody of the Attorney General for designation of their places of confinement. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

United States Parole Commission was not a proper respondent in prisoner's habeas corpus action that sought his immediate parole release from a non-District correctional facility; Commission was not prisoner's jailer even though it had power to release prisoner. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

#### Federal officers.

With respect to habeas corpus petition of petitioner convicted for local crimes in the United States District Court for the District of Columbia and confined in District of Columbia reformatory which was designated by the Attorney General as the appropriate facility in which the sentence was to be served, the director of the District of Columbia Department of Corrections and the superintendent of the reformatory were "federal officers or officials" within meaning of District of Columbia Code section providing that petitions for writs of habeas corpus directed to federal officers and employees shall be filed in the United States District Court for the District of Columbia. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

District of Columbia courts do not have concurrent powers with federal courts with respect to challenges to United States Parole Commission (USPC) activity; the District of Columbia Code actually precludes the filing of habeas petitions in Superior Court that challenge the actions of federal officials. *Owens v. Gaines*, 219 F.Supp.2d 94, 2002 U.S. Dist. LEXIS 16122 (2002).

With respect to inmates who were incarcerated in District of Columbia correctional complex in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia, warden of the complex was an "officer or employee of the United States" within District of Columbia statute permitting petitions for writs of habeas corpus directed to federal officers or employees to be heard by United States District Court for the District of Columbia and requiring all other such writs to be filed in the Superior Court for the District of Columbia. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901(b, c). *Fitzgerald v.*



Sigler, 372 F. Supp. 889, 1974 U.S. Dist. LEXIS 9546 (1974), vacated by 534 F.2d 353, 175 U.S. App. D.C. 151, 1976 U.S. App. LEXIS 12260 (1976).

The Superior Court lacked subject matter and personal jurisdiction to grant request for habeas corpus relief by defendant who was incarcerated in federal facility in West Virginia. *Knight v. United States*, 892 A.2d 1096, 2006 D.C. App. LEXIS 86 (2006).

### **Harmless or reversible error.**

Trial court's reclassification of petition for writ of habeas corpus as one to vacate sentence was not reversible error; Antiterrorism and Effective Death Penalty Act did not apply to postconviction actions brought in District of Columbia courts, and trial court would have lacked jurisdiction to consider motion otherwise. *Graham v. United States*, 895 A.2d 305, 2006 D.C. App. LEXIS 146 (2006).

### **Jurisdiction.**

Provisions of District of Columbia Code requiring habeas corpus petitions to be filed in D.C. superior court unless directed to federal officer does not divest federal courts of jurisdiction to hear habeas corpus petitions filed by D.C. prisoners under federal statute granting power to district court to grant the writ; the D.C. provisions only state proper place for bringing petitions under D.C. Code, not other sources of authority. 18 U.S.C. § 2241; D.C. Code 1981, § 16-1901(a-c). *Blair-Bey v. Quick*, 151 F.3d 1036, 1998 U.S. App. LEXIS 16931 (C.A.D.C. 1998), remanded by 159 F.3d 591, 333 U.S. App. D.C. 1, 1998 U.S. App. LEXIS 26201 (1998).

Section of District of Columbia Code providing that person committed, detained, confined or restrained from his lawful liberty "within the district" may petition for writ of habeas corpus does not restrict the jurisdiction of the United States District Court for the District of Columbia in any way in which a federal district court located elsewhere is not restricted but is at most an additional jurisdictional statute relating to particular local problems, and its "within the district" language should be construed in pari materia with the "within their respective jurisdictions" language of federal habeas corpus statute. D.C. Code §§ 16-1901, 16-1909; 18 U.S.C. § 2241. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Traditional venue considerations would normally dictate that claims of individuals convicted by courts within the District of Columbia but sentenced to correctional institutions maintained by District officials outside the territorial jurisdiction of the District should be brought before courts within the District. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v.*

*Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

The United States District Court for the District of Columbia had exclusive jurisdiction over habeas petitions filed within the District by petitioner serving a district court sentence for local crimes even though petitioner challenged the legality of the local prison's administrative decision to transfer him to maximum security confinement. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Although intent of District of Columbia Court Reform Act was to create a local judicial system that would place prosecution of crime in the District on the same footing as in other states, Superior Court of District of Columbia does not have jurisdiction to entertain habeas corpus petitioner convicted for local crimes in the United States District Court for the District of Columbia and confined in the District of Columbia reformatory on theory that a person convicted in a state court must first exhaust state remedies before filing a habeas petition in a federal court. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Section of District of Columbia Code providing that person committed, detained, confined, or restrained from his lawful liberties within the District may apply by petition to the appropriate court for writ of habeas corpus was not intended to alter the "federal status" of prisoners convicted in United States District Court and confined in District of Columbia correctional facilities. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Under District of Columbia Code section providing that certain habeas petitions "shall" be filed in district court, while others "shall" be filed in superior court, habeas jurisdiction within the District of Columbia is exclusively vested in one court or the other. D.C. Code §§ 11-921(a)(3)(A)(iii), 16-1901. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

Though the United States District Court for the District of Columbia had jurisdiction of habeas petition, the fact that the petitioner was serving a sentence imposed by the Superior Court of the District of Columbia, arising under violations of the District of Columbia Code and not federal law, meant that the petitioner must first file his petition with the Superior Court before seeking relief from the District Court, and the petition would be dismissed without prejudice until such time as the petitioner had exhausted all available remedies within the District of Columbia court system. *Bailey v.*

Quick, 191 F.Supp.2d 7, 2001 U.S. Dist. LEXIS 22886 (2001).

Petitioner challenging sentence imposed by District of Columbia superior court and being held in custody of District officials was required to file habeas corpus petition in superior court, and, thus, federal district court lacked jurisdiction. D.C. Code 1981, § 16-1901. *Wilson v. Office of Chairperson*, 892 F. Supp. 277, 1995 U.S. Dist. LEXIS 9841 (1995).

Prisoners convicted in District of Columbia Superior Court and incarcerated in District of Columbia facilities must file habeas corpus petitions in the Superior Court, while prisoners convicted in Superior Court but incarcerated in federal facilities must file their petitions in the United States district court. D.C. Code 1981, § 16-1901(b, c). *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

Prisoner serving District of Columbia Superior Court sentence in a District of Columbia facility was required to file his habeas corpus petition in the District of Columbia Superior Court and could not file it in the United States District Court. D.C. Code 1981, § 16-1901. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

Parolees who were incarcerated at District of Columbia correctional complex located in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia for offenses committed subsequent to their releases on parole were "confined" within District of Columbia within statute providing that a person must be committed, detained, confined or restrained within the District before writ of habeas corpus may be entertained in any court in the District. D.C. Code § 16-1901(a). *Fitzgerald v. Sigler*, 372 F. Supp. 889, 1974 U.S. Dist. LEXIS 9546 (1974), vacated by 534 F.2d 353, 175 U.S. App. D.C. 151, 1976 U.S. App. LEXIS 12260 (1976).

The District of Columbia Court Reform and Criminal Procedure Act of 1970 extinguishes traditional authority of federal court to review local judicial actions in the District of Columbia by the issuance of writs of habeas corpus. D.C. Code §§ 16-1901, 23-110(d); 18 U.S.C. § 2254(b, c). *Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

Where District of Columbia superior court judge dismissed juvenile's petition for habeas corpus without prejudice to its being filed in the United States district court for the District of Columbia, the respondent was federal officer, petitioner was charged with federal offense as well as with violations of District of Columbia law and petitioner was challenging the conditions of his confinement, federal court had jurisdiction to consider the petition. D.C. Code §§ 16-1901, 16-2301, 16-2301(3)(A), 22-502, 22-2901, 22-3202, 23-110(d); 18 U.S.C. § 2114; 18 U.S.C. §§ 2241(c)(1, 3), 2254(b, c); U.S. Const.

art. 1, § 9, cl. 2; *Amend 8. Bland v. Rodgers*, 332 F. Supp. 989, 1971 U.S. Dist. LEXIS 12463 (1971).

Prisoner's "Habeas" Petition in which he asserted that Parole Commission was required under Youth Act to set aside prior robbery conviction because he had been granted unconditional discharge prior to expiration of sentence was, in essence, one seeking relief under §§ 1983 or as appeal to Superior Court's general jurisdiction to do equity, and should have been so construed, rather than as one for habeas relief or motion attacking sentence over which trial court would have no jurisdiction, in that prisoner was essentially requesting that record related to prior conviction be sealed, and therefore, could not be considered in sentencing for subsequent offense. *Norris v. United States*, 927 A.2d 1034, 2007 D.C. App. LEXIS 324 (2007).

The Superior Court does not have jurisdiction to entertain a habeas corpus petition directed against federal respondents. *Graham v. United States*, 895 A.2d 305, 2006 D.C. App. LEXIS 146 (2006).

District of Columbia Courts may grant habeas corpus relief only for prisoners incarcerated within the District or in District of Columbia correctional facilities. *Knight v. United States*, 892 A.2d 1096, 2006 D.C. App. LEXIS 86 (2006).

Under habeas corpus statute, Superior Court lacked jurisdiction to entertain prisoner's petition directed against federal respondents, i.e., Chairman of the United States Parole Commission and the Attorney General of the United States, as statute required such petitions to be filed in the United States District Court for the District of Columbia. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Court may not grant habeas corpus relief unless it has personal jurisdiction over the custodian of the prisoner. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

In general, only courts having jurisdiction over the warden of a penitentiary can grant a writ of habeas corpus on behalf of any of its inmates. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Interstate Corrections Compact does not expand the jurisdiction of the courts of the District of Columbia over habeas corpus petitions challenging the denial of parole or otherwise contesting the legality of a transferred prisoner's confinement. *Taylor v. Washington*, 808 A.2d 770, 2002 D.C. App. LEXIS 559 (2002).

Even if prisoner, in custody of federal officers, was not being confined pursuant to a District of Columbia sentence, prisoner properly filed habeas petition in Superior Court of District of Columbia, as gravamen of petition was directed to manner of execution by District of Columbia



Board of Parole of sentence imposed by Superior Court once he violated terms of his parole by committing federal offense; petition was neither in form nor substance against federal custodian, but against District of Columbia officers who had responsibility over his parole from District of Columbia sentence. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

A habeas petitioner is deemed to be held by "Federal officers and employees," regardless of the site of incarceration, when he is serving a federal sentence, such that the United States District Court has jurisdiction over habeas petition; otherwise, the District of Columbia Superior Court has jurisdiction. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

Issuance of writ under habeas corpus statute is simply means of bringing petitioner before Superior Court for hearing on petitioner's claim for relief. D.C. Code 1981, § 16-1901. *Bennett v. Ridley*, 639 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

District of Columbia courts could grant habeas corpus relief only for prisoners incarcerated within the district or in District of Columbia correctional facilities and thus could not grant relief to a prisoner incarcerated in California. D.C. Code 1981, § 16-1901. *Alston v. United States*, 590 A.2d 511, 1991 D.C. App. LEXIS 101 (1991).

Petitioner who had been serving federal prison sentence which had not expired when parole violator warrant was issued against him by federal parole commission was still in federal custody, and therefore, superior court did not have jurisdiction over petitioner for habeas corpus because district officials in charge of his incarceration were acting in their federal capacity. D.C. Code § 16-1901. *Jones v. Jackson*, 416 A.2d 249, 1980 D.C. App. LEXIS 318 (1980).

Trial court was without jurisdiction to entertain petition for writ of habeas corpus on behalf of juveniles who were all presently outside the territorial jurisdiction of the court, since stat-

ute explicitly states that the person must be "committed, detained, confined, or restrained from his lawful liberty within the District". D.C. Code § 16-1901. *B. v. District of Columbia Dep't Human Resources, etc.*, 287 A.2d 827, 1972 D.C. App. LEXIS 348 (1972).

### Review.

Appeal of Superior Court's denial of motion to vacate or of habeas corpus petition should be appealed to the District of Columbia Court of Appeals before United States District Court for the District of Columbia attempts to ascertain whether the local remedy is inadequate or ineffective. D.C. Code 1981, §§ 16-1901, 23-110. *Perkins v. Henderson*, 881 F. Supp. 55, 1995 U.S. Dist. LEXIS 4165 (1995).

Habeas petitioner waived appellate review of his claim that retroactive application of sex offender registration law to persons who, like him, committed their crimes before law was enacted would violate Double Jeopardy Clause of Fifth Amendment and Ex Post Facto Clause of Constitution; petitioner failed to present that claim to trial court. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

District of Columbia waived appellate review of its claim that habeas petitioner who challenged applicability of sex offender registration law failed to first exhaust his administrative remedies by applying to Court Services and Offender Supervision Agency for District of Columbia (CSOSA) before he went to court; District raised that claim for first time on appeal, and petitioner's action was functionally equivalent to application for judicial review contemplated by Sex Offender Registration Act. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

When a habeas corpus petition challenges a revocation of parole, the court does not review the merits of the Board of Parole's decision to revoke, but is limited to a review of the procedures used by the Board in reaching its decision. *Barnes v. District of Columbia Bd. of Parole*, 759 A.2d 1073, 2000 D.C. App. LEXIS 261 (2000).

## § 16-1902. Service of writ; return.

A writ of habeas corpus issued pursuant to this chapter shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained. The officer or other person shall forthwith, or within such reasonable time as the court or judge directs:

- (1) make return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ; and
- (2) certify the true cause of his detainer or imprisonment, if any, and under what color or pretense he is confined or restrained of his liberty.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1902. 1973 Ed., § 16-1902.

#### CASE NOTES

##### **Return of writs.**

Inmate petitioning for writ of habeas corpus was not improperly denied opportunity to traverse writ's return, even though he was not served with copy of District's answer to Superior Court's order to show cause why writ should not issue; because writ was not granted,

authority detaining inmate was not required to "make return of the writ," and thus, inmate never acquired right to "traverse the return." D.C. Code 1981, §§ 16-1902(1), 16-1907. *Bogan v. District of Columbia Bd. of Parole*, 749 A.2d 127, 2000 D.C. App. LEXIS 68 (2000).

### **§ 16-1903. Suspected evasion or disobedience of writ; procedure.**

On an application for a writ of habeas corpus, if probable cause is shown for believing that the person charged with confining or detaining the person applying therefor, or on whose behalf the application is made:

(1) is about to remove the person so detained from the place where he is then detained, for the purpose of evading a writ of habeas corpus, or for other purposes; or

(2) he would evade or not obey a writ of habeas corpus — the court or judge shall insert in the writ a clause commanding the United States marshal to serve the writ on the person to whom it is directed and cause him immediately to appear before the court or judge, together with the person so confined or detained. Thereupon, the marshal shall immediately carry those persons before the court or judge, and the court or judge shall proceed to inquire into the matter.

(Dec. 23, 1963, 77 Stat. 583, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1903. 1973 Ed., § 16-1903.

### **§ 16-1904. Forfeiture and penalty for failure to produce.**

If an officer or other person to whom a writ of habeas corpus is directed neglects or refuses to:

(1) make return of the writ; or

(2) bring the body of the person detained — according to the command of the writ, he shall forfeit to the person detained the sum of \$500, and be liable to attachment and punishment as for a contempt.

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1904. 1973 Ed., § 16-1904.



## CASE NOTES

**Liability.**

Statute imposing penalty on person who neglects or refuses to respond to writ of habeas corpus is intended to impose personal as distinct from official liability. D.C. Code 1961, § 16-1904. *Whittington v. Cameron*, 344 F.2d 564, 1965 U.S. App. LEXIS 6195 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 855, 86 S. Ct. 105, 86 S. Ct. 106, 15 L. Ed. 2d 93, 1965 U.S. LEXIS 807 (1965).

Action to collect penalty for neglect or refusal

to respond to writ of habeas corpus naming as respondent present superintendent of hospital was fatally defective where actions complained of were those of superintendent since retired. D.C. Code 1961, §§ 16-1904, 24-302. *Whittington v. Cameron*, 344 F.2d 564, 1965 U.S. App. LEXIS 6195 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 855, 86 S. Ct. 105, 86 S. Ct. 106, 15 L. Ed. 2d 93, 1965 U.S. LEXIS 807 (1965).

**§ 16-1905. Right to copy of commitment; forfeiture.**

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of \$500.

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1905. 1973 Ed., § 16-1905.

## CASE NOTES

## ANALYSIS

Construction and application.  
Forfeitures.

**Construction and application.**

Purpose of habeas corpus statute allowing person committed or detained to demand true copy of warrant of commitment or detainer and providing for \$500 forfeiture for failure to provide copy within six hours of demand is to assure that detainee is informed promptly of basis for detention. D.C. Code 1981, § 16-1905. In re *Khamvongsa*, 697 A.2d 19, 1997 D.C. App. LEXIS 135 (1997).

**Forfeitures.**

Inmate who was transferred to psychiatric hospital on emergency basis was not entitled to statutory forfeiture of \$500 for failure to deliver

copy of warrant of commitment or detainer to inmate within six hours; there was no warrant or detainer which could be produced, and inmate was provided with copies of all documents relevant to detention. D.C. Code 1981, §§ 16-1905, 24-302; Mental Health Rule 9(j). In re *Khamvongsa*, 697 A.2d 19, 1997 D.C. App. LEXIS 135 (1997).

Statute allowing person committed or detained to demand true copy of warrant of commitment or detainer and providing for \$500 forfeiture for failure to provide copy within six hours of demand does not impose forfeiture for failure to move prisoner within certain time frames; while delays in transfer of offender should not be protracted, reasonable time is permitted to execute court orders or transfers. D.C. Code 1981, § 16-1905. In re *Khamvongsa*, 697 A.2d 19, 1997 D.C. App. LEXIS 135 (1997).

**§ 16-1906. Inquiry into cause of detention; bail; bond.**

On the return of a writ of habeas corpus issued pursuant to this chapter and the production of the person detained, the court or judge shall immediately inquire into the legality and propriety of the confinement or detention. If it appears that the person is detained without legal warrant or authority, the court or judge shall immediately release or discharge him. If the court or judge

deems his detention to be lawful and proper, the court or judge shall remand him to the same custody, or, in a proper case, admit him to bail, if he is confined on a charge of having committed a bailable criminal offense. If he is bailed, the court or judge shall require a sufficient bond or recognizance to answer in the proper court, and transmit it to that court.

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1906. 1973 Ed., § 16-1906.

#### CASE NOTES

##### ANALYSIS

Grounds for relief.  
Jurisdiction.

##### Grounds for relief.

The habeas court decides whether the petitioner has been deprived of his legal rights in a parole hearing by the manner in which the hearing was conducted, in order to determine whether there has been an abuse of discretion by the Board of Parole. *Wells v. Golden*, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

A prisoner has the right to raise, through a petition for habeas corpus, any issues arising from the execution of his sentence. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

Federal prisoner's habeas petition failed to state prima facie case that arrest warrant for violation of his parole on District of Columbia

sentence by committing federal offense was executed such that he began to serve time on District of Columbia conviction, where prisoner proffered document that plainly stated that it was not executed at that time; if warrant was not executed, prisoner's incarceration on federal sentence did not count against his prior District of Columbia sentence, and District of Columbia Board of Parole had no duty to hold parole revocation hearing. *Hill v. District of Columbia Bd. of Parole*, 766 A.2d 497, 2000 D.C. App. LEXIS 304 (2000).

##### Jurisdiction.

Where accused was present within District of Columbia only because of his counsel's request that he be brought into District for interviews, habeas corpus challenging his detention in Virginia reformatory would not lie in the District. *Ginyard v. Clemmer*, 357 F.2d 291, 1966 U.S. App. LEXIS 7132 (C.A.D.C. 1966).

## § 16-1907. Traversing return; pleading; witnesses.

A person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention. The court or judge may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause pending in the court, if the court or judge is satisfied as to the materiality of the testimony proposed to be adduced.

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-1907. 1973 Ed., § 16-1907.

#### CASE NOTES

##### Return of writs.

Inmate petitioning for writ of habeas corpus was not improperly denied opportunity to traverse writ's return, even though he was not served with copy of District's answer to Super-

rior Court's order to show cause why writ should not issue; because writ was not granted, authority detaining inmate was not required to "make return of the writ," and thus, inmate never acquired right to "traverse the return."



D.C. Code 1981, §§ 16-1902(1), 16-1907. Bogan v. District of Columbia Bd. of Parole, 749 A.2d 127, 2000 D.C. App. LEXIS 68 (2000).

## § 16-1908. Right of other persons to writ.

A person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, spouse, or domestic partner, entitled to the custody of a minor child, ward, lunatic, spouse, or domestic partner, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(t), 45 DCR 745; Sept. 12, 2008, D.C. Law 17-231, § 20(f), 55 DCR 6758.)

**Cross references.** — Custody of children, divorce or annulment, see § 16-911.

Representation of indigents in criminal cases, see § 11-2601.

**Prior Codifications.** — 1981 Ed., § 16-1908.

1973 Ed., § 16-1908.

**Effect of amendments.** — D.C. Law 17-231 substituted "spouse, or domestic partner" for "or husband" and "or wife"; and inserted "For the purposes of this section, the term 'domestic partner' shall have the same meaning as provided in § 32-701(3)."

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

## § 16-1909. Construction of chapter.

This chapter does not affect any provision of chapter 153 of Title 28, United States Code.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Cross references.** — Juvenile curfew, parenting classes, see § 2-1543.

**Prior Codifications.** — 1981 Ed., § 16-1909.

1973 Ed., § 16-1909.

### CASE NOTES

#### Jurisdiction.

Provisions of District of Columbia Code requiring habeas corpus petitions to be filed in

D.C. superior court unless directed to federal officer does not divest federal courts of jurisdiction to hear habeas corpus petitions filed by

D.C. prisoners under federal statute granting power to district court to grant the writ; the D.C. provisions only state proper place for bringing petitions under D.C. Code, not other sources of authority. 18 U.S.C. § 2241; D.C. Code 1981, § 16-1901(a-c). *Blair-Bey v. Quick*, 151 F.3d 1036, 1998 U.S. App. LEXIS 16931 (C.A.D.C. 1998), remanded by 159 F.3d 591, 333 U.S. App. D.C. 1, 1998 U.S. App. LEXIS 26201 (1998).

Section of District of Columbia Code providing that person committed, detained, confined or restrained from his lawful liberty "within the

district" may petition for writ of habeas corpus does not restrict the jurisdiction of the United States District Court for the District of Columbia in any way in which a federal district court located elsewhere is not restricted but is at most an additional jurisdictional statute relating to particular local problems, and its "within the district" language should be construed in *pari materia* with the "within their respective jurisdictions" language of federal habeas corpus statute. D.C. Code §§ 16-1901, 16-1909; 18 U.S.C. § 2241. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).



## CHAPTER 21. JOINT CONTRACTS.

Sec.

16-2101. Definition of joint and several contracts.

16-2102. Death of party to the contract.

16-2103. Extinguishment or merger of cause of action.

Sec.

16-2104. Death after action brought; legal representatives.

16-2105. Proof of joint liability unnecessary; judgment.

16-2106. Separate composition or compromise.

## § 16-2101. Definition of joint and several contracts.

For the purposes of action thereon, a contract or obligation entered into by two or more persons, whether:

- (1) the persons are partners or joint contractors;
- (2) the contract is under seal or not;
- (3) it is written or verbal; or
- (4) it is expressed to be joint and several or not —

is deemed to be joint and several.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2101. 1973 Ed., § 16-2101.

## CASE NOTES

## ANALYSIS

Construction and application.  
Joinder of parties.  
Joint contracts.

**Construction and application.**

District of Columbia statute providing that, for purpose of action thereon, contract and obligations entered into by two or more persons are deemed to be joint and several does not affect substantive rights and duties of parties. D.C. Code § 16-2101. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026, 1973 U.S. App. LEXIS 6519 (C.A.D.C. 1973).

Statutes regarding joint and several liability related to procedure only, and did not convert a joint obligation into a joint and several obligation. *White v. Connecticut General Life Ins. Co.*, 34 App.D.C. 460, 1910 U.S. App. LEXIS 5834 (1910).

**Joinder of parties.**

As to claims tied to condemnation award, adjudication should have been limited to parties before the court without joinder of absent colessors, in that colessors were not persons needed for just adjudication and joinder of absent colessors was not feasible. *Fed.Rules Civ.Proc. Rule 19*, 18 U.S.C. *Park v. Didden*, 695 F.2d 626, 1982 U.S. App. LEXIS 23422 (C.A.D.C. 1982).

On facts alleged by assignees of leasehold interest in property concerning co-owner's 1978

refusal to consent to reassignment of lease, there was no reason for designating colessors as anything other than proper parties, persons whose joinder was permissive, not compulsory. *Fed.Rules Civ.Proc. Rule 19*, 18 U.S.C. *Park v. Didden*, 695 F.2d 626, 1982 U.S. App. LEXIS 23422 (C.A.D.C. 1982).

**Joint contracts.**

Generally, obligation created by promise of several persons is joint unless contrary is made evident. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026, 1973 U.S. App. LEXIS 6519 (C.A.D.C. 1973).

Where agreement relating to acquisition of half interest in apartment project referred to defendant as "owner" and to two plaintiffs and third party collectively as "prospective purchaser" or "purchaser," contract did not distinguish between plaintiffs and third party in any way and option imposed conditions upon "the purchaser," the agreement was substantially joint as to plaintiffs and third party, for purposes of determining whether their joint performance was required before plaintiffs were entitled to enforce the option. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026, 1973 U.S. App. LEXIS 6519 (C.A.D.C. 1973).

Any number of persons may bind themselves jointly for performance of one entire duty and so become sureties for one another for performance of thing contracted to be done and whether they do depends upon contract they

choose to make. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026, 1973 U.S. App. LEXIS 6519 (C.A.D.C. 1973).

Law ascribes to contractual obligation of two or more a joint character unless contract makes evident an intention that a several performance is to be indulged. *Clayman v. Goodman Properties, Inc.*, 518 F.2d 1026, 1973 U.S. App. LEXIS 6519 (C.A.D.C. 1973).

Generally, an obligation created by the promise of several persons is joint unless the contrary is made evident. *Welch v. Sherwin*, 300 F.2d 716, 1962 U.S. App. LEXIS 5957 (C.A.D.C. 1962).

Co-promisors are liable jointly if all of them have promised entire performance, and severally if they have promised separate performances, and they are collectively and individually liable for entire performance if they agreed to be held jointly and severally liable. *Welch v. Sherwin*, 300 F.2d 716, 1962 U.S. App. LEXIS 5957 (C.A.D.C. 1962).

Directors and president of federal stock savings association sued in derivative action alleging mishandling of contested election for board seats were severally but not jointly liable under District of Columbia law to association for advanced legal expenses; plain words of contract between association and officers manifested intent that each officer be obligated to repay only

his "fair share" of attorneys' fees advanced by association if it were later determined that he was not entitled to indemnification. *Bender v. Jordan*, 570 F.Supp.2d 37, 2008 U.S. Dist. LEXIS 61235 (2008), affirmed by 623 F.3d 1128, 393 U.S. App. D.C. 143, 2010 U.S. App. LEXIS 22374 (2010).

Under District of Columbia law, obligation created by promise of several persons is joint unless contrary is made evident. *Bender v. Jordan*, 570 F.Supp.2d 37, 2008 U.S. Dist. LEXIS 61235 (2008), affirmed by 623 F.3d 1128, 393 U.S. App. D.C. 143, 2010 U.S. App. LEXIS 22374 (2010).

For work and labor done, plaintiff cannot recover, in an action of indebitatus assumpsit, against three defendants, upon a contract under the seal of one defendant only, unless the contract was made for the benefit of all the defendants, and the work was performed according to the contract. *Fresh v. Gilson*, 9 F.Cas. 810, 1838 U.S. App. LEXIS 405 (1838).

Although all claims against maker of note are merged into final judgment on note, merger doctrine does not prevent subsequent suit against other parties such as endorers and accommodation parties whose liability on instrument is joint and several. D.C. Code §§ 16-2101, 16-2103. *McLachlen Nat'l Bank v. Fields*, 364 A.2d 1191, 1976 D.C. App. LEXIS 390 (1976).

## § 16-2102. Death of party to the contract.

If a person specified by section 16-2101 dies, his executors, administrators, or heirs are bound by the contract in the same manner and to the same extent as if the contract or obligation were expressed to be joint and several.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2102. 1973 Ed., § 16-2102.

### CASE NOTES

#### Survivors.

Non-competitive contract, in providing that if party entitled to compensation should die during period covered, payment would be made to his survivor or to his estate required that payments be made to survivor and, in absence of any survivor, to estate. *Sills v. Kline Paper Stock Co.*, 238 F. Supp. 833, 1965 U.S. Dist. LEXIS 6431 (D.D.C.1965).

"Survivor", as used in contract providing that if party entitled to compensation died before period had elapsed, compensation would be paid to his "survivor" or to his estate, embraced both his widow and his son, and each was entitled to one-half of the compensation. *Sills v. Kline Paper Stock Co.*, 238 F. Supp. 833, 1965 U.S. Dist. LEXIS 6431 (D.D.C.1965).

## § 16-2103. Extinguishment or merger of cause of action.

Where, with respect to a contract specified by section 16-2101, an action is brought against:



(1) all the parties thereto, but service of process is had on some, only, of the defendants; or

(2) some, only, of the parties thereto, and service of process is had on them only —

a judgment against the parties so served does not work an extinguishment or merger of the cause of action on which the judgment is founded as respects the parties not so served. They shall remain liable to be sued separately.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2103. 1973 Ed., § 16-2103.

#### CASE NOTES

##### **Merger of actions.**

Although all claims against maker of note are merged into final judgment on note, merger doctrine does not prevent subsequent suit against other parties such as endorsers and accommodation parties whose liability on instrument is joint and several. D.C. Code §§ 16-2101, 16-2103. *McLachlen Nat'l Bank v. Fields*,

364 A.2d 1191, 1976 D.C. App. LEXIS 390 (1976).

Prior judgment entered against maker on note did not cancel note with respect to claims against accommodation endorsers or serve to discharge their liability. D.C. Code §§ 16-2101, 16-2103. *McLachlen Nat'l Bank v. Fields*, 364 A.2d 1191, 1976 D.C. App. LEXIS 390 (1976).

### **§ 16-2104. Death after action brought; legal representatives.**

When one of several defendants in an action dies after the commencement of the action, his legal representatives may be made parties to the action as directed by Chapter 1 of Title 12.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2104. 1973 Ed., § 16-2104.

### **§ 16-2105. Proof of joint liability unnecessary; judgment.**

In actions *ex contractu* against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action. He is entitled to recover, as in actions *ex delicto*, against such of the defendants as are shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him and judgment shall be rendered as if the others had not been joined in the action.

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2105. 1973 Ed., § 16-2105.

### **§ 16-2106. Separate composition or compromise.**

Any one of several joint debtors when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect

**§ 16-2106** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

as is provided in the case of parties by Chapter 3 of Title 41 [now chapter 3 of Title 33].

(Dec. 23, 1963, 77 Stat. 585, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2106. 1973 Ed., § 16-2106.



## CHAPTER 23. FAMILY DIVISION PROCEEDINGS.

### *Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision*

- Sec.  
16-2301. Definitions.  
16-2301.01. References deemed to refer to Family Court of the Superior Court.  
16-2301.02. Purpose.  
16-2302. Transfer of criminal matters to Family Division.  
16-2303. Retention of jurisdiction.  
16-2304. Right to counsel; party status.  
16-2305. Petition; contents; amendment.  
16-2305.01. Findings.  
16-2305.02. Preliminary probation conferences; adjustment process.  
16-2306. Service of summons and petition.  
16-2307. Transfer for criminal prosecution.  
16-2308. Initial appearance.  
16-2309. Taking into custody.  
16-2310. Criteria for detaining children.  
16-2310.01. Separation of young children detained prior to a hearing.  
16-2311. Release or delivery to Family Division [Family Court].  
16-2311.01. Rules.  
16-2312. Detention or shelter care hearing; intermediate disposition.  
16-2312a. Evaluation of family team meetings and 72-hour time period for commencement of shelter care hearing.  
16-2313. Place of detention or shelter.  
16-2314. Consent decree.  
16-2315. Physical and mental examinations.  
16-2316. Conduct of hearings; evidence.  
16-2316.01. Scheduling of fact finding and dispositional hearings for children alleged to be neglected.  
16-2317. Hearings, findings; dismissal.  
16-2318. Order of adjudication noncriminal.  
16-2319. Predisposition study and report.  
16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.  
16-2320.01. Restitution.  
16-2321. Disposition of mentally ill or substantially retarded child.  
16-2322. Limitation of time on dispositional orders.  
16-2323. Review of dispositional orders.  
16-2324. Vacation, termination of orders.  
16-2325. Support of committed child.  
16-2325.01. Participation order.  
16-2325.02. Report on failure of respondents to appear in delinquency cases.  
16-2326. Court costs and expenses.

- Sec.  
16-2326.01. Compensation of attorneys in neglect and termination of parental rights proceedings.  
16-2327. Probation revocation; disposition.  
16-2328. Interlocutory appeals.  
16-2329. Finality of judgments; appeals; transcripts.  
16-2330. Time computation.  
16-2331. Juvenile case records; confidentiality; inspection and disclosure.  
16-2332. Juvenile social records; confidentiality; inspection and disclosure.  
16-2333. Police and other law enforcement records.  
16-2333.01. Permitted disclosures of juvenile information.  
16-2333.02. Juvenile Abscondence Review Committee.  
16-2334. Fingerprint records.  
16-2335. Sealing of records.  
16-2335.01. Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence.  
16-2335.02. Sealing of records on ground of actual innocence.  
16-2336. Unlawful disclosure of records; penalties.  
16-2337. Additional powers of the Director of Social Services.  
16-2338. Emergency medical treatment.  
16-2339. Immunity for juveniles who are witnesses in juvenile proceedings.  
16-2340. Rights of victims or eyewitnesses in delinquency proceedings.

### *Subchapter II. Parentage Proceedings*

- 16-2341. Representation.  
16-2342. Who may bring a complaint; time.  
16-2342.01. Voluntary acknowledgement of paternity.  
16-2343. Tests to establish parentage.  
16-2343.01. Admissibility of tests.  
16-2343.02. Sanctions.  
16-2343.03. Default order.  
16-2343.04. No right to jury trial.  
16-2344. Exclusion of public.  
16-2345. New birth record upon marriage or determination of parents.  
16-2346. Certificate to Registrar.  
16-2347. Death of respondent; liability of estate.  
16-2348. Parentage records; confidentiality; inspection and disclosure.  
16-2349. Inclusion of social security numbers in parentage records.  
16-2349.01. Child support pendente lite.

## § 16-2301 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

### *Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children*

Sec.

- 16-2351. Purpose of the subchapter; construction of provisions.
- 16-2352. Definitions.
- 16-2353. Grounds for termination of parent and child relationship.
- 16-2354. Motions.
- 16-2355. Consideration of termination of the parent and child relationship at review hearings.
- 16-2356. Parties.
- 16-2357. Notice.
- 16-2358. Conduct of hearings.
- 16-2359. Adjudicatory hearing.
- 16-2360. Disposition after termination.
- 16-2361. Effect of termination decree.
- 16-2362. Decrees.
- 16-2363. Confidentiality of records.
- 16-2364. Unlawful disclosure.
- 16-2365. Termination decrees of other jurisdictions.

### *Subchapter IV. Court-Appointed Special Advocates*

- 16-2371. Definitions.

Sec.

- 16-2372. Court-appointed special advocate program.

### *Subchapter V. Permanent Guardianship*

- 16-2381. Purpose of the subchapter; construction of provisions.
- 16-2382. Definitions.
- 16-2383. Grounds for the creation of a permanent guardianship.
- 16-2384. Motions.
- 16-2385. Parties.
- 16-2386. Notice.
- 16-2387. Conduct of hearings.
- 16-2388. Adjudicatory hearings.
- 16-2389. Effect of guardianship order.
- 16-2390. Jurisdiction.
- 16-2391. Relocation.
- 16-2392. Guardianship order; finality; appeals; transcripts.
- 16-2393. Confidentiality of records.
- 16-2394. Unlawful disclosure.
- 16-2395. Modification, termination, or enforcement of the guardianship order.
- 16-2396. Support.
- 16-2397. Interlocutory order of guardianship.
- 16-2398. Successor guardian.
- 16-2399. Permanent guardianship subsidy.

### *Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision.*

## § 16-2301. Definitions.

As used in this subchapter —

(1) The term “Division” means the Family Division of the Superior Court of the District of Columbia. Pursuant to section 16-2301.01, the term “Division” shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.

(1A) “Family Court” means the Family Court of the Superior Court of the District of Columbia.

(2) The term “judge” means a judge assigned to the Family Division of the Superior Court.

(3) The term “child” means an individual who is under 18 years of age, except that the term “child” does not include an individual who is sixteen years of age or older and —

(A) charged by the United States attorney with (i) murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term “child” also includes a person under



the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term “minor” means an individual who is under the age of twenty-one years.

(5) The term “adult” means an individual who is twenty-one years of age or older.

(6) The term “delinquent child” means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term “delinquent act” means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term “child in need of supervision” means a child who —

(A)(i) subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9)(A) The term “neglected child” means a child:

(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to § 16-1003;

(ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;

(iii) whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(iv) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child’s care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care;

(v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;

(vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;

(vii) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made

any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(viii) who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;

(ix) in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or

(x) who is regularly exposed to illegal drug-related activity in the home.

(B) No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter.

(C) Subparagraph (A)(viii), (ix), and (x) of this paragraph shall apply as of October 1, 2003.

(10) The term "mentally ill child" means a child who is mentally ill within the meaning of section 21-501.

(11) The term "substantially retarded child" means a child who is substantially retarded within the meaning of section 21-1101 et seq.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian:

(A) to whom the legal custody of a child has been granted by the order of a court;

(B) who is acting in loco parentis; or

(C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.

(13) The term "detention" means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.

(14) The term "shelter care" means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.

(15) The term "detention or shelter care hearing" means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.

(16) The term "factfinding hearing" means a hearing to determine whether the allegations of a petition are true.

(17) The term "dispositional hearing" means a hearing, after a finding of fact, to determine —

(A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or

(B) what order of disposition should be made in a neglect case.

(18) The term "probation" means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a



minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.

(19) The term “protective supervision” means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.

(20) The term “guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to) —

(A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;

(B) the authority and duty of reasonable visitation (except as limited by Division order);

(C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term “legal custody” means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes —

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care.

A Division order of “legal custody” is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term “residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support.

(23)(A) The term “abused”, when used with reference to a child, means:

(i) infliction of physical or mental injury upon a child;

(ii) sexual abuse or exploitation of a child; or

(iii) negligent treatment or maltreatment of a child.

(B)(i) The term “abused”, when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term “discipline” does not include:

(I) burning, biting, or cutting a child;  
 (II) striking a child with a closed fist;  
 (III) inflicting injury to a child by shaking, kicking, or throwing the child;  
 (IV) nonaccidental injury to a child under the age of 18 months;  
 (V) interfering with a child's breathing; and  
 (VI) threatening a child with a dangerous weapon or using such a weapon on a child. For purposes of this provision, the term "dangerous weapon" means a firearm, a knife, or any of the prohibited weapons described in § 22-4514.

(ii) The list in sub-subparagraph (i) of this subparagraph is illustrative of unacceptable discipline and is not intended to be exclusive or exhaustive.

(24) The term "negligent treatment" or "maltreatment" means failure to provide adequate food, clothing, shelter, or medical care, which includes medical neglect, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian.

(25) The term "sexual exploitation" means a parent, guardian, or other custodian allows a child to engage in prostitution as defined in section 2(1) of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; § 22-2701.01 [now § 22-2701.01(3)]), or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; § 22-3101(5)).

(26) The term "parenting classes" means any program which enhances the parenting skills of individuals through providing role models, discussion, training in early childhood development and child psychology, or other instruction designed to strengthen the parent, guardian, or custodian's ability to nurture children.

(27) The term "family counseling" means any psychological or psychiatric or other social service offered by a provider to the parent and 1 or more members of the extended family or the child's guardian or other caretaker of a child who has been adjudicated neglected, delinquent, or in need of supervision. A caretaker is an adult person in whose care a minor has been entrusted by written authorization of the child's parent, guardian, or legal custodian.

(28) The term "entry into foster care" means the earlier of:

(A) The date of the first judicial finding that the child has been neglected; or

(B) The date that is 60 days after the date on which the child is removed from the home.

(29) The term "Agency" means the Child and Family Services Agency established by section 6-2121.01 [§ 4-1303.01a].

(30) The term "physical injury" means bodily harm greater than transient pain or minor temporary marks.

(31) The term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression,



withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

(32) The term “sexual abuse” means:

(A) engaging in, or attempting to engage in, a sexual act or sexual contact with a child;

(B) causing or attempting to cause a child to engage in sexually explicit conduct; or

(C) exposing a child to sexually explicit conduct.

(33) The term “sexually explicit conduct” means actual or simulated:

(A) sexual act;

(B) sexual contact;

(C) bestiality;

(D) masturbation; or

(E) lascivious exhibition of the genitals, anus, or pubic area.

(34) The term “sexual act” shall have the same meaning as provided in section 101(8) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code s 22-3001(8)).

(35) The term “sexual contact” shall have the same meaning as provided in section 101(9) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code s 22-3001(9)).

(36) The term “controlled substance” means a drug or chemical substance, or immediate precursor, as set forth in Schedules I through V of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code s 48-901.01 et seq.), which has not been prescribed by a physician.

(37) The term “drug-related activity” means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(38) The term “incompetent to proceed” means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(39) The term “psychiatrist” means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

(40) The term “qualified psychologist” means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(41)(A) The term “victim” means any person, organization, partnership, business, corporation, agency or governmental entity:

(i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

(B) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

(42) The term “immediate family member” means:

(A) the person’s parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

(B) any person who maintains or has maintained a romantic relationship, not necessarily including a sexual relationship, with the person; or

(C) any person who has a child in common with the person.

(43) The term “weapons offense” means any violation of any law, rule, or regulation which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device as these terms are defined in section 7-2501.01.

(44) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(45) The term “Superior Court” means the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 523, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a), 24 DCR 3341; Mar. 12, 1986, D.C. Law 6-90, § 2, 33 DCR 307; Mar. 15, 1990, D.C. Law 8-87, § 4(a), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(a), 37 DCR 2613; Mar. 6, 1991, D.C. Law 8-200, § 2, 37 DCR 7334; Mar. 16, 1995, D.C. Law 10-227, § 3(a), 42 DCR 4; May 23, 1995, D.C. Law 10-257, § 401(e), 42 DCR 53; Apr. 18, 1996, D.C. Law 11-110, § 65, 43 DCR 530; Mar. 24, 1998, D.C. Law 12-81, § 10(u), 45 DCR 745; June 27, 2000, D.C. Law 13-136, § 301(a)(1), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(1), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 3(a), 49 DCR 7815; Mar. 13, 2004, D.C. Law 15-105, § 55, 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 202(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(a), 54 DCR 864; Sept. 12, 2008, D.C. Law 17-231, § 20(g), 55 DCR 6758; Mar. 8, 2011, D.C. Law 18-284, § 3(b), 57 DCR 10477.)

**Cross references.** — Family Court of the Superior Court, jurisdiction, see § 11-1101.

**Prior Codifications.** — 1981 Ed., § 16-2301.

1973 Ed., § 16-2301.

**Effect of amendments.** — D.C. Law 13-136 added par. (28).

D.C. Law 13-277 added par. (29).

D.C. Law 14-206 rewrote pars. (9) and (23); and added pars. (30) through (37).

D.C. Law 15-105, in par. (9)(B), validated a previously made technical correction.

D.C. Law 15-261 added pars. (38) to (42).

D.C. Law 16-274, in par. (1), at the end of the paragraph, added “Pursuant to section 16-2301.01, the term ‘Division’ shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.”; and added pars. (1A) and (43), defining “Family Court” and “weapons offense”, respectively.



D.C. Law 17-231 added par. (44).

D.C. Law 18-284 added par. (45).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(a) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary amendment of section, see § 2 of the District of Columbia Public School Firearm Prohibition Emergency Act of 1989 (D.C. Act 8-4, March 7, 1989, 36 DCR 1906).

For temporary amendment of section, see § 4 of the Prevention of Child Neglect Emergency Amendment Act of 1993 (D.C. Act 10-100, August 9, 1993, 40 DCR 6141).

For temporary amendment of section, see § 4 of the Prevention of Child Neglect Emergency Amendment Act of 1994 (D.C. Act 10-288, July 22, 1994, 41 DCR 4992).

For temporary (90-day) amendment of section, see § 301(a) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(a) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(a) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 201(a) of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 301(a) of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 201(a) of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 4-1321.01.

**Legislative history of Law 6-90.** — Law 6-90 was introduced in council and assigned Bill No. 6-104, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-118 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-1.** — Law 8-1, the "District of Columbia Public School Fire-

arm Prohibition Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-130. The Bill was adopted on first and second readings on February 14, 1989, and February 28, 1989, respectively. Signed by the Mayor on March 21, 1989, it was assigned Act No. 8-8 and transmitted to both Houses of Congress for its review. D.C. Law 8-1 became effective on May 16, 1989.

**Legislative history of Law 8-87.** — Law 8-87, the "Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-139, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-137 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-134.** — Law 8-134, the "Infant and Child Abandonment Prevention Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-404, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-190 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-200.** — Law 8-200, the "Child Abuse and Neglect Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-81, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 9, 1990, and October 23, 1990, respectively. Signed by the Mayor on November 8, 1990, it was assigned Act No. 8-263 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-61.** — D.C. Law 10-61, the "Prevention of Child Neglect Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-374. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-114 and transmitted to both Houses of Congress for its review. D.C. Law 10-61 became effective on November 20, 1993.

**Legislative history of Law 10-227.** — Law 10-227, the "Parental Responsibility Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-634, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-368 and transmitted to both Houses of Congress for its

review. D.C. Law 10-227 became effective on March 16, 1995.

**Legislative history of Law 10-257.** — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 12-81.** — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Legislative history of Law 13-136.** — Law 13-136, the “Adoption and Safe Families Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

**Legislative history of Law 13-277.** — Law 13-277, the “Child and Family Services Agency Establishment Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-796, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No. 13-590 and transmitted to both Houses of Congress for its review. D.C. Law 13-277 became effective on April 4, 2001.

**Legislative history of Law 14-206.** — Law 14-206, the “Improved Child Abuse Investigations Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-372, which

was referred to Committee on the Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-440 and transmitted to both Houses of Congress for its review. D.C. Law 14-206 became effective on October 19, 2002.

**Legislative history of Law 15-105.** — For Law 15-105, see notes following § 16-1005.

**Legislative history of Law 15-261.** — Law 15-261, the “Omnibus Juvenile Justice Act of 2004,” was introduced in Council and assigned Bill No. 15-537, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-637 and transmitted to both Houses of Congress for its review. D.C. Law 15-261 became effective on March 17, 2005.

**Legislative history of Law 16-274.** — Law 16-274, the “Mandatory Juvenile Public Safety Notification Act of 2006,” was introduced in Council and assigned Bill No. 16-732, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-630 and transmitted to both Houses of Congress for its review. D.C. Law 16-274 became effective on March 14, 2007.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

**Editor’s notes.** — Prompt Payment of Appointed Counsel. Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 953, provided:

“(a) ASSESSMENT OF INTEREST FOR DELAYED PAYMENTS—If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

“(b) PAYMENTS DESCRIBED.—A payment described in this subsection is —

“(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Code (relating to representation provided under the District of Columbia Criminal Justice Act);



"(2) a payment for counsel appointed in proceedings in the Family Division of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) **STANDARDS FOR SUBMISSION OF COMPLETED VOUCHERS.**—The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) **Effective Date.**—This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2002, and claims received previously that remain unpaid at the end of fiscal year 2001, and would have qualified for interest payment under this section."

**Prompt Payment of Appointed Counsel.** Section 128 of Pub. L. 108-7, Feb. 20, 2003, 117 Stat. 127, provided:

"(a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the

Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) A payment described in this subsection is—

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year."

## CASE NOTES

### ANALYSIS

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### Admissibility of evidence.

Mother's statements to maternal aunts, as to violence father allegedly inflicted upon mother, was not admissible under "present sense impression" exception to hearsay rule, in neglect proceeding; most of mother's statements to and conversations with maternal aunts regarding alleged abuse by father were not made contemporaneously with the events. In re Ty.B, 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (2005).

Trial court's admission of mother's statements to maternal aunts, as to violence father allegedly inflicted upon mother, under various hearsay exceptions was improper in neglect proceeding; government never identified hearsay exception for court to review, and judge made hearsay exception rulings after the fact, without a foundation having been laid, and without father having had the opportunity to challenge any premise on which admission of statements under any hearsay exception may have been based. In re Ty.B, 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (2005).

Testimony of four maternal aunts regarding statements made to each of them by mother concerning violence allegedly inflicted upon her by father was inadmissible hearsay, rather than admissions of a party opponent, in neglect proceeding; in order to be receivable as admission of party opponent, out-of-court statement had to be made by party and be contrary to party's position at trial, and mother's out-of-court statements described by maternal aunts were contrary to non-declarant father's position, but not contrary to any position taken by declarant mother. In re Ty.B, 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (2005).

Exclusion, in neglected child proceeding that involved father's alleged failure to support child and allegations by child's mother of domestic violence, of evidence relating to love letters from mother to father was not abuse of discretion, where letters did not mention support of child by father, and father testified as to his support for child. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

Civil protection orders (CPOs) that were entered against father in intrafamily offense proceeding were admissible in separate child neglect proceeding in which mother was main government witness, where father testified that mother started the domestic violence, thus attempting to call into question the basis for issuance of CPOs, and both father and mother were present and represented by counsel dur-

ing CPO proceedings. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

In determining whether juvenile is child in need of supervision, court may rely only on evidence that is legally admissible. Juvenile Rule 26. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

That school's records, sought to be introduced in child in need of supervision action, had been taken from a business file was insufficient to qualify for business-records exception to hearsay rule where there was no evidence that it was practice of public schools to make such document, nor was there any proof that unidentified maker had personal knowledge of facts set forth in document or that facts had been reported to unidentified maker in some manner by one who had personal knowledge. General Family Rule Q(a). In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

In child in need of supervision action, school document was not shown to be admissible under public-records exception to hearsay rule where no proof was offered that alleged absences recorded in document were within personal knowledge of unidentified reporting official or that document was prepared pursuant to a legal duty. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

Under the District of Columbia neglect statute it is permissible to consider the same factors relevant in a common law tort analysis in order to determine whether physical punishment of a child was unreasonable and, therefore, constituted neglect or abuse. In re U.F., 118 WLR 541 (Super. Ct. 1990).

### Child.

#### — Exceptions, child.

Exercise of discretion by the United States Attorney under statute, in part providing that the term "child" does not include an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses, is not violative of due process on theory that it denies the individual charged the presumption of innocence. D.C. Code § 16-2301(3)(A). United States v. Bland, 472 F.2d 1329, 1972 U.S. App. LEXIS 7659 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975, 1973 U.S. LEXIS 2396 (1973).

Statute defining "child" as not including an individual 16 years of age or older charged by the United States attorney with certain offenses violated basic presumption of innocence in that it is based on assumption that anyone arrested for a crime has committed that crime and denies due process in providing for arbitrary transfer of 16 and 17-year-olds based only upon the United States attorney's unfettered discretion. D.C. Code §§ 16-2301(3)(A), 16-



2307, 16-2307(d, e). *United States v. Bland*, 330 F. Supp. 34, 1971 U.S. Dist. LEXIS 12246 (1971), reversed by 472 F.2d 1329, 153 U.S. App. D.C. 254, 1972 U.S. App. LEXIS 7659 (1972).

Statute authorizing United States Attorney to charge juvenile age 16 or over as adult for enumerated offenses, by deeming individual not to be "child" when such offenses are charged, has in effect decreed, by operation of law, transfer of that individual to Criminal Division. D.C. Code 1981, § 16-2301(3)(A). In *re D.H.*, 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

"Child" as used in the statute to determine whether individual should be tried as an adult in criminal court without judicial transfer excludes juvenile when he or she is charged with assault with intent to commit murder, but not when he or she is charged with assault with intent to kill. D.C. Code 1981, §§ 16-2301(3), (3)(A), 16-2307, 22-501. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

Even if juvenile is tried as an adult, he is eligible for special treatment under Federal Youth Corrections Act. D.C. Code §§ 11-1101(13), 16-2301(3)(A); 18 U.S.C. § 5010(a). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

#### — In general.

Person's status as "child" for purpose of juvenile delinquency proceedings is determined by reference to date of charge filed by United States Attorney. D.C. Code 1981, § 16-2301(3)(A). In *re M.R.*, 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

Statute which prohibits commitment of child found to be juvenile delinquent to penal or correctional institution for adult offenders does not preclude a commitment to juvenile facility of person previously held in adult facility who was found to be "child" for purpose of juvenile delinquency proceedings. D.C. Code 1981, §§ 16-2301, 16-2302(c), 16-2313(d, e), 16-2320(e); Criminal Rule 52. In *re M.R.*, 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

Statute defining the term "child" for purposes of determining whether individual is prosecuted as an adult or a juvenile should be strictly construed against prosecution and in the favor of person being proceeded against. D.C. Code 1981, § 16-2301(3)(A). *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

With respect to statute defining term child for purposes of determining whether accused is subject to juvenile or adult court, accused legally became 18 years old on day of his birthday and not day before it, and thus he was properly found to be subject to exclusive jurisdiction of family division pursuant to another statute,

where he was arrested and charged on day before his eighteenth birthday. D.C. Code §§ 11-1101(13), 16-2301(3). *United States v. Tucker*, 407 A.2d 1067, 1979 D.C. App. LEXIS 468 (1979).

In view of rehabilitative purposes of juvenile justice system, statute defining term child for purposes of determining whether accused is subject to juvenile or adult court should be strictly construed against prosecution and in favor of person being proceeded against. D.C. Code § 16-2301(3), (3)(A). *United States v. Tucker*, 407 A.2d 1067, 1979 D.C. App. LEXIS 468 (1979).

Although District of Columbia Court Reorganization Act was passed subsequent to decision in which United States Supreme Court noted in addressing precourt reorganization predecessor of statute defining term child the decision whether accused was subject to juvenile or adult court was vitally important one, and such Act was intended to work substantive contraction of juvenile court jurisdiction, it evinced legislative policy of adult treatment for juveniles emphasizing nature of crime rather than merely age of accused, and adoption of New York rule, that birthdate as opposed to artificial arrangement resulting on day before birthdate controlled age of juvenile offender, would be consistent with this policy. D.C. Code § 16-2301(3), (3)(A). *United States v. Tucker*, 407 A.2d 1067, 1979 D.C. App. LEXIS 468 (1979).

#### Children in need of supervision, generally.

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. 18 U.S.C. § 2241 et seq.; D.C. Code §§ 11-1551, 16-2301, 16-2320(b); U.S. Const. Amends. 5, 6. *Brown v. Yeldell*, 487 F.2d 1210, 1973 U.S. App. LEXIS 6801 (C.A.D.C. 1973).

Notwithstanding the deficiency of petition, which was insufficient to support adjudication of child as habitually disobedient and ungovernable, rather than an outright reversal or dismissal thereby producing irrational consequences flowing from a forced reunion in an apparently deteriorated family structure Court of Appeals remanded cause to trial court for commencement of such further proceedings within 30 days as might be deemed just in circumstances; if further proceedings were not begun within that time adjudication would be vacated. D.C. Code §§ 16-2301(8)(A)(iii), (8)(B), 17-306. In *re C.G.S.*, 372 A.2d 1017, 1977 D.C. App. LEXIS 470 (1977).

#### Commitment proceedings.

Regardless of fact that proceeding involving involuntary commitment of mentally retarded

child was not brought under authority of child neglect statute, such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since statute governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such statute did not provide a claim for reimbursement against the organization. D.C. Code §§ 16-2301 et seq., 16-2315, 21-586. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

### Construction and application.

Under District of Columbia law, civil proceeding based on neglect is remedial in nature and focuses on child and his or her best interest. D.C. Code 1981, § 16-2301 et seq. *Raboya v. Shrybman & Assoc.*, 777 F. Supp. 58, 1991 U.S. Dist. LEXIS 16381 (1991).

Although multiply handicapped child's problem were educational as well as emotional and social, resolution of whether District of Columbia Board of Education or Department of Human Resources was responsible for placing child in a residential facility which could provide medical supervision, special education and psychological support would not be left up to local authorities, with DHR asserting that appropriate procedure was a neglect action; rather, federal statutes placing duty on Board of Education were to be invoked since a neglect proceeding would itself have a devastating effect on the child and resort to federal law was the only legal available alternative. Education of the Handicapped Act, §§ 602 et seq., 612(5)(B), (6), 20 U.S.C. §§ 1401 et seq., 1412(5)(B), (6); Rehabilitation Act of 1973, § 2 et seq., 29 U.S.C. § 701 et seq.; U.S. Const. Amend. 5. *North v. District of Columbia Bd. of Education*, 471 F. Supp. 136, 1979 U.S. Dist. LEXIS 13123 (1979).

The child neglect statute is remedial and thus is to be liberally construed to achieve that end. In re *Te.L.*, 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

The child neglect statute is a remedial enactment designed to protect the welfare of neglected and abused children, and it must be liberally construed to achieve that end. In re *A.H.*, 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Where there is no nexus between the act underlying the ultimate finding of neglect and the mother's financial circumstances for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, it is enough that the deprivation is due to reasons other than a lack of financial means. In re *A.H.*, 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

If the parent has the ability, with reasonable effort, to overcome the effects of her poverty, deprivation of her children is not due to the parent's lack of financial means for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means. In re *A.H.*, 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

When a child neglect proceeding presents multiple deprivations, some due to lack of financial means and some due to other factors, statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means requires that the neglect determination be based on the factors not attributable to the lack of financial means. In re *A.H.*, 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Neglect statute does not proscribe all physical chastisement of a child by a parent or by one acting in loco parentis; on the contrary, the prohibition of "excessive corporal punishment" necessarily means that non-excessive corporal punishment does not constitute child abuse. In re *G.H.*, 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

In civil cases alleging child neglect, the focus is on the best interest of the child, rather than the culpability of the parents; thus neglect statutes authorizing state intervention should be liberally construed to enable the court to carry out its obligations as *parens patriae*. In re *C.C.J.*, 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Although the neglect statute is remedial and thus to be liberally construed to achieve that end, that principle does not allow courts to engraft a definition on a statutory term that is inconsistent with its ordinary meaning and dictated by nothing in the statute or its genesis. In re *M.W.*, 756 A.2d 913, 2000 D.C. App. LEXIS 186 (2000).

Purpose of child neglect statute is to promote the best interests of allegedly neglected children, and because of its beneficent purposes, such legislation is liberally construed in child's favor. D.C. Code 1981, § 16-2301(9). In re *E.H.*, 718 A.2d 162, 1998 D.C. App. LEXIS 192 (1998).

Statute precludes placement of a child adjudicated to be a child in need of supervision (CINS) in a facility for delinquent children unless there has been a second CINS adjudication. D.C. Code 1981, § 16-2320(d). In re *W.L.*, 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Child neglect statute does not impose lesser standard care on noncustodial parent. D.C. Code 1981, § 16-2301(9)(B). In re *B.C.*, 582 A.2d 1196, 1990 D.C. App. LEXIS 305 (1990).

Neglect proceedings are remedial and focus on the child and are critically different from



criminal prosecutions, which are primarily concerned with an allegedly abusive parent. D.C. Code 1981, § 16-2301(9)(E). In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

Neglect statutes authorizing state intervention on a child's behalf are remedial, and they should be liberally construed to enable the court to carry out its obligations as *parens patriae*. D.C. Code 1981, §§ 16-2301, 16-2320. In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

Where order permanently terminating parental visitation rights entered prior to effective date of new Prevention of Child Abuse and Neglect Act was vacated and case remanded for further proceedings, Act was fully applicable to all subsequent proceedings. D.C. Code §§ 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Juvenile Code, particularly the "child in need of supervision" section, is not a criminal statute in the ordinary sense. D.C. Code § 16-2301(8). *District of Columbia v. B.J.R.*, 332 A.2d 58, 1975 D.C. App. LEXIS 317 (1975), writ of certiorari denied by 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685, 1975 U.S. LEXIS 1957 (1975).

The "child in need of supervision" statute reinforces the authority of parents to control their children through the giving of reasonable and lawful commands, and it may be invoked when children repeatedly refuse to recognize their obligation to obey such commands. D.C. Code § 16-2301(8). *District of Columbia v. B.J.R.*, 332 A.2d 58, 1975 D.C. App. LEXIS 317 (1975), writ of certiorari denied by 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685, 1975 U.S. LEXIS 1957 (1975).

"Child in need of supervision" statute gave appellee-child adequate warning that to abscond from home five times in four years, three of those times within the nine months preceding the filing of the petition alleging the appellee to be a child in need of supervision, would subject her to the sanctions provided for a child who is habitually disobedient of the reasonable and lawful commands of her parents. D.C. Code § 16-2301(8)(A)(iii), (B). *District of Columbia v. B.J.R.*, 332 A.2d 58, 1975 D.C. App. LEXIS 317 (1975), writ of certiorari denied by 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685, 1975 U.S. LEXIS 1957 (1975).

Statute governing the dispositional order for a child adjudicated neglected does not apply to changes in placement status from third-party to committed status, or from committed to third-party status in neglect proceedings, because these status changes to not affect the determination of who has legal custody of the neglected child, and do not change the disposition of the child. In the Matter of A.S., 131 WLR 2249 (Super. Ct. 2003).

#### **Construction with other laws.**

New act, effective September 30, 1977, which

provides for termination of all parental rights in neglect proceeding does not provide for permanent termination of parental visiting rights as such and does not amend statute prescribing time limits on dispositional orders, and thus in child neglect proceedings, dispositional orders concerning termination of parental visitation rights are subject to those time limitations. D.C. Code §§ 16-2322, 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Newly enacted District of Columbia Court Reorganization Act of 1970 does not automatically require a new determination of status for previously committed juveniles. D.C. Code §§ 11-921(a)(1), 16-2301 et seq. *B. v. District of Columbia Dep't Human Resources, etc.*, 287 A.2d 827, 1972 D.C. App. LEXIS 348 (1972).

#### **Criminal charges.**

##### **— In general.**

Individual is "charged" under code section authorizing United States Attorney to charge juvenile age 16 or over as adult for enumerated crimes once judge has signed and filed arrest warrant in warrant office based on probable cause derived from complaint and supporting affidavit signed by police officer and approved by Assistant United States Attorney who has designated on affidavit and warrant one of enumerated felony offenses. D.C. Code 1981, § 16-2301(3)(A). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Juvenile may be charged with assault to commit murder under statute which provides for imprisonment of defendant convicted of assaulting another with intent to commit any offense not enumerated in either of two other assault statutes, and offense of assault with intent to commit murder falls within provision authorizing automatic transfer of juvenile offenders for prosecution as adults. D.C. Code 1981, §§ 16-2301(3)(A), 22-501 to 22-503. *United States v. Hobbs*, 594 A.2d 66, 1991 D.C. App. LEXIS 193 (1991).

For purposes of statute pursuant to which defendant who is 16 years of age or older and has been "charged" by United States Attorney with assault with intent to murder while armed must be prosecuted as adult for charged offense and all subsequent delinquent acts, defendant was charged with assault with intent to murder while armed when criminal complaint, affidavit showing charge designated and approved by assistant United States attorney, and warrant based on probable cause were signed by judge and filed in warrant office, rather than when defendant was actually presented in court after arrest, despite defendant's apparent concern that he receive notice at adversarial hearing of criminal charge before subsequent acts could be treated as criminal acts and that Government

sufficiently examine its decision to prosecute before criminal jurisdiction automatically attached to subsequent acts; defendant's apparent concerns lacked statutory foundation in determining time of charge. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h). *Marrow v. United States*, 592 A.2d 1042, 1991 D.C. App. LEXIS 167 (1991).

Defendant who was charged with assault with intent to kill who was 17 years old could not be charged as an adult under statute permitting individuals aged 16 or 17 to be charged as adults for murder or attempted murder without judicial transfer. D.C. Code 1981, §§ 16-2301(3), (3)(A), 16-2307, 22-501. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

"Attempt to commit murder" as used in statute allowing 16 and 17-year-olds so charged to be tried as adults without judicial transfer from family court to criminal division does not include "assault with intent to kill." D.C. Code 1981, §§ 16-2301(3)(A), 22-501. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

Although 17-year-old defendant was initially petitioned as a juvenile in Family Division on a charge of assault with intent to kill, a transfer hearing was not required before defendant, following death of victim some two months after the assault, could be charged by the United States Attorney as an adult with second-degree murder. D.C. Code §§ 16-2301(3)(A), 16-2307, 22-2403. *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

#### — Prosecutorial discretion, criminal charges.

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of family division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by statute, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in family division. D.C. Code §§ 11-1101(13), 11-1501 et seq., 16-2301(3)(A), 16-2307; 18 U.S.C. § 5010(a). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

Decision vested in prosecutor whether juveniles, who are 16 years of age and who are charged with certain enumerated offenses, should be charged as adults is not subject to judicial review or to requirements of due process, at least in absence of particular circumstances of abuse of discretion. D.C. Code §§ 11-

1101(13), 16-2301(3)(A). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

#### Custodians.

Instituting child neglect proceeding against mother did not constitute plain error, even though mother claimed she did not have custody of child; although mother did not have actual legal custody of child, mother had actual custody of child for two days every two weeks, and abuse that was alleged to have been committed on child was to have occurred while child was staying at mother's home. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed, with impunity and social worker's refusal to comply with order was not punishable as contempt. D.C.C.E §§ 16-2301(12, 21), 16-2310, 16-2312, 16-2312(d)(2)(A); D.C. Code SCR, Juvenile Rule 42(a). In re Banks, 306 A.2d 270, 1973 D.C. App. LEXIS 307 (1973).

Stepfather meets definition of custodian for "neglected child" purposes. In re S.G., 116 WLR 1149 (Super. Ct. 1988).

Paragraph (21) does not purport to be exclusive in defining powers of a legal custodian and the specific enumerated powers are indicated to be "included" within the custodian's powers; the included power to train and discipline would appear to embrace duty of determining where and how training and discipline would be carried out. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

#### Defenses.

The status of non-custodial parent does not automatically provide a defense to a neglect proceeding, but there can be no finding of neglect unless the parent has been shown, by a preponderance of the evidence, to have personally failed in the discharge of her parental responsibilities vis-a-vis the child. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Lack of moral fault is not a defense to a claim of child neglect. D.C. Code 1981, § 16-2301(9). In re E.H., 718 A.2d 162, 1998 D.C. App. LEXIS 192 (1998).

#### Delinquency proceedings.

Trial court, once it had adjudicated juvenile as delinquent for plea involving misdemeanor theft, lacked authority to dismiss proceeding, to vacate delinquency adjudication, or to terminate probation for social reasons; words "at or after" in provision of statute that determinations of whether a child is in need of care or



rehabilitation may only be made "at or after" the dispositional hearing could not be read so expansively as to permit dismissal of a petition, effectively infringing on agency director's clear statutory prerogative to control juvenile's term of probation. In re D.M., 47 A.3d 539, 2012 D.C. App. LEXIS 314 (2012).

Trial judge's decision in juvenile delinquency case to enter, prior to reviewing an individualized education program, a disposition that ordered residential placement at hospital was not an abuse of discretion or otherwise improper, as neither the juvenile justice laws nor the IDEA required such a review. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Statute prohibiting sexual contact with child by person who is at least four years older than child imposed a duty on juvenile, under pain of strict liability, to determine age of child before having sexual contact with her, and that being so, common sense dictated that by engaging in forbidden sexual contact with child, juvenile was presumptively in need of rehabilitation. D.C. Code 1981, §§ 16-2301(6), 16-2317(c)(2), 22-4101(3, 9), 22-4109. In re E.F., 740 A.2d 547, 1999 D.C. App. LEXIS 256 (1999).

It was reversible error for trial court to apply the "reverse Jencks" rule in juvenile delinquency proceeding, notwithstanding the absence of any statute or rule provision so authorizing, and in enforcing this rule by personally examining file of defense investigator in a vain search for pretrial statement of defense witness. 18 U.S.C. § 3500. In re S.H., 570 A.2d 814, 1990 D.C. App. LEXIS 45 (1990).

Family division has authority to dismiss a delinquency petition at dispositional hearing if the court finds that child who committed a "delinquent act" is, nonetheless, not "in need of care and rehabilitation" and thus is not a "delinquent child." Juvenile Rules 48(b), 48 comment; D.C. Code 1981, §§ 16-2301(6, 7), 16-2320(c). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

Upon government's violation of its plea bargain agreement to waive allocation at juvenile disposition, remand of proceeding was required for new disposition before different judge to determine whether juvenile was in need of care or rehabilitation. D.C. Code 1981, § 16-2301(6); Juvenile Rule 48(b). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

Government violated its plea agreement to waive allocation at juvenile disposition by arguing that juvenile was in need of care and rehabilitation, rather than merely arguing court's authority to dismiss, in opposition to motion to dismiss juvenile proceeding. D.C. Code 1981, § 16-2301(6). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

Since appellant, who had been found guilty of attempted robbery while armed after a delin-

quency petition was filed against him, had become 18 years of age, so that he was no longer subject to jurisdiction of family division, and more than four years had passed since holding of suppression hearing, case would be remanded to trial court for additional findings, without prejudice to dismissal of original delinquency petition. D.C. Code 1973, §§ 16-2301(3), 17-306, 22-2902 to 22-3202. In re P., 439 A.2d 460, 1981 D.C. App. LEXIS 404 (1981).

It is implicit in statutory scheme with respect to juvenile delinquency that noncriminal treatment is to be the rule and adult treatment the exception. D.C. Code § 16-2301 et seq. In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

Statutory provision proscribing assaults on officers or employees of juvenile facility "located within the District of Columbia or elsewhere" was intended to reach attacks on personnel of juvenile facility taking place outside, as well as inside, the District, and thus family division had jurisdiction of proceedings brought against two juveniles based upon their assaults on counselors at District juvenile facility located in Maryland. D.C. Code §§ 16-2301(7), 22-505(a). In re W., 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

An act is delinquent if "designated" an offense under District of Columbia law; there is no additional requirement that offense be subject to prosecution in the District courts. D.C. Code § 16-2301(7). In re W., 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

Statutory provisions limiting criminal division jurisdiction to offenses committed within the District's boundaries did not apply, on theory that delinquency adjudication presupposed commission of criminal acts, to delinquency proceedings and thus did not limit delinquency petitions to violations that occurred within boundaries of the District of Columbia. D.C. Code §§ 11-923(b)(1), 11-1101, 11-1101(13), 16-2301(6, 7). In re W., 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

Where following break up of altercation near front of tavern police officer was informed by unidentified person that one of the three participants, who went into tavern, had a gun, and on entering tavern officer observed four persons seated in a booth, one of whom answered description which had been given him, the officer had a duty to investigate and, in the process, to determine preliminarily whether described individual was armed; thus, pistol, which was observed on floor of booth, was admissible in delinquency proceeding. D.C. Code §§ 16-2301, 16-2318, D.C. Code SCR, Juvenile Rules 11, 31(c); U.S. Const. Amend. 4. District of Columbia v. M.E.H., 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

Superior court had discretion to permit amendment of juvenile delinquency petition, which alleged violation of federal law, so as to allege violation of District law. D.C. Code SCR, Juvenile Rule 7(e); D.C. Code SCR, Criminal Rule 7(e); D.C. Code §§ 11-721(a)(1), 16-2301(7), 16-2305(e), 22-2202, 22-2205. In re G., 305 A.2d 529, 1973 D.C. App. LEXIS 303 (1973).

### **Dependent child.**

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, the child continued in that status, and there was no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child would go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

Where nine-year-old girl had previously been adjudged a "dependent child," the trial court had the authority under its continuing jurisdiction over the child to hear and determine the question of whether custody of the child should be given to the natural mother, who, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, or to the foster parents with whom the child had lived virtually all her life. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

Where juvenile had originally been determined to be a "dependent child," under provisions of law which was superseded upon enactment of District of Columbia Court Reorganization Act of 1970, and where a nontestimonial hearing was held after such enactment which apparently looked anew into the present status of the juvenile, resulting in a determination that the juvenile was a person in need of supervision, juvenile who alleged that such hearing lacked procedural rights guaranteed in de novo determinations of juvenile's status as prescribed by applicable provision of the new statute was not entitled to habeas corpus relief, since such hearing was not one required by law. D.C. Code §§ 11-1551, 16-2301 et seq., 16-2305, 16-2306(a), 16-2308, 16-2316, 16-2317; D.C. Code SCR, Juvenile Rules 7(C), 10, 32, 43. B. v. District of Columbia Dep't Human Resources, etc., 287 A.2d 827, 1972 D.C. App. LEXIS 348 (1972).

### **Dismissal of action.**

When government seeks to dismiss neglect petition pretrial based upon good-faith deter-

mination that proof is insufficient, motion must be granted even over objection of guardian ad litem (GAL). D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

If government seeks to dismiss neglect petition over objection of guardian ad litem (GAL) for reasons other than insufficient proof of neglect, e.g., rehabilitation of parent, court must while giving due weight to judgment of petitioning agency, make appropriate inquiry, including evidentiary one if necessary, to determine whether best interests of child will be served by dismissal. Neglect Rules 2, 18. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Due Process.**

Exercise of the discretion vested by statute in United States Attorney to charge a person 16 years of age or older with certain enumerated offenses, thereby initiating that person's prosecution as an adult, is not violative of due process. D.C. Code § 16-2301(3)(A). United States v. Bland, 472 F.2d 1329, 1972 U.S. App. LEXIS 7659 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975, 1973 U.S. LEXIS 2396 (1973).

Plaintiff lacked standing to seek declaratory judgment regarding the legality, under procedural due process principles, of District of Columbia's policies governing placement of juveniles in shelter care before receiving either a factfinding hearing or a dispositional hearing in a juvenile delinquency proceeding, in absence of an allegation from which one might infer a real and immediate threat that the alleged wrong would recur; when plaintiff filed his lawsuit he was already 18 years old, so that under District of Columbia law he was no longer in danger of being placed once more in shelter care in alleged violation of due process. Doe v. District of Columbia, 706 F.Supp.2d 128, 2010 U.S. Dist. LEXIS 38230 (2010).

Due process under the statutory scheme for child neglect only requires that finding of neglect be based on preponderance of evidence; statutory scheme involves at most a temporary suspension of parental rights. D.C. Code 1981, § 16-2301 et seq.; U.S. Const. Amends. 5, 14. Raboya v. Shrybman & Assoc., 777 F. Supp. 58, 1991 U.S. Dist. LEXIS 16381 (1991).

Juveniles in 16-18-year-old age group who are charged with certain enumerated felonies are not denied procedural due process or equal protection of the laws because under the provisions of the District of Columbia Court Reform and Criminal Procedure Act of 1970 the United



States attorney is authorized to proceed directly in adult court against such offenders. D.C. Code §§ 16-2301(3)(A)(i), 16-2307; U.S. Const. Amend. 5. *United States v. Alexander*, 333 F. Supp. 1213, 1971 U.S. Dist. LEXIS 11355 (1971).

State intrusion in parent-child relationships is, presumptively, a last resort; it is not something to be indulged on account of trivial or insubstantial concerns, as parents have a due process right to make decisions concerning the care, custody, and control of their children. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Permitting court-appointed guardian ad litem to file motion to terminate parental rights following adjudication of neglect does not violate due process; once child has been adjudicated neglected, right of family privacy and integrity has already been subordinated to that extent to District's right and duty to protect mother and children through judicial determinations of their interest and, at that point, no valid right to family integrity is breached merely by allowing guardian ad litem, who may be uniquely familiar with facts of case and parties, to initiate and pursue termination. D.C. Code 1981, § 16-2354(a); U.S.C. Const.Amends. 5, 14. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

Natural father's claimed denial of due process in commitment proceedings for neglected child was premature, where trial court had not yet made factual finding as to whether father had received actual notice of proceeding by virtue of his ongoing relationship with mother. U.S.C. Const.Amends. 5, 14. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Due process permitted finding of child neglect to be based on preponderance of evidence, rather than clear and convincing evidence; statutory scheme involved temporary, third-party placement or supervised placement of child with parent for two-year period followed by annual reviews after notice and hearing and new determination that child was neglected. D.C. Code 1981, §§ 16-2317(c)(2), 16-2322(a); U.S.C. Const.Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

Right of natural parent to raise child is fundamental and essential precept which is constitutionally protected. U.S.C. Const.Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

Statutory exception to physician-patient privilege in child neglect proceeding did not violate mother's due process privacy right with regard to medical information; interest of District of Columbia in assuring that mother was mentally competent to raise her daughter was sufficiently strong to limit privacy rights. D.C. Code 1981, §§ 2-1355, 14-307; U.S.C.

Const.Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

Failure of trial court to grant a continuance sua sponte to allow physician to form an opinion of natural mother's ability to care for infant did not deny natural mother due process of law in proceeding to terminate parental rights where physician could not have predicted what his prognosis would be in six months and other physicians testified that natural mother was a chronic paranoid schizophrenic. U.S.C.A. Const.Amend 14. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

A finding of parental unfitness is not required by due process clause of Fifth Amendment as prerequisite for involuntary termination of parental rights. D.C. Code 1981, § 16-2353(b); U.S. Const.Amends. 5, 14. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

### Federal abstention.

Younger abstention was appropriate in lawsuit brought on behalf of foster child who claimed to have been discriminated against on basis of his testing positive for AIDS-associated human immunodeficiency virus, inasmuch as constitutional issues raised by child could be raised in parallel neglect proceedings. *Christopher B. v. Barry*, 715 F. Supp. 1143, 1989 U.S. Dist. LEXIS 8511 (1989).

### First Amendment Rights.

To the extent that First Amendment activities may be infringed when the "child in need of supervision" statute is applied, the court, in balancing such infringement against the right and duty of a parent to teach, control and discipline a child, is obliged to grant the parent greater latitude in the First Amendment area than is permitted the state. D.C. Code § 16-2301(8)(A)(iii), (B); U.S. Const. Amend. 1. *District of Columbia v. B.J.R.*, 332 A.2d 58, 1975 D.C. App. LEXIS 317 (1975), writ of certiorari denied by 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685, 1975 U.S. LEXIS 1957 (1975).

Strict enforcement of First Amendment rights must be tempered in considering disciplinary problems involving a parent-child relationship. D.C. Code § 16-2301(8)(A)(iii), (B); U.S. Const. Amend. 1. *District of Columbia v. B.J.R.*, 332 A.2d 58, 1975 D.C. App. LEXIS 317 (1975), writ of certiorari denied by 421 U.S. 1016, 95 S. Ct. 2425, 44 L. Ed. 2d 685, 1975 U.S. LEXIS 1957 (1975).

### Guardians ad litem.

Guardian ad litem (GAL) for child in neglect proceeding lacks authority to file neglect petitions or to maintain such proceedings independently of corporation counsel. D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S.

1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### In general.

Statute providing that Family Division of the Superior Court of the District of Columbia shall hear and adjudicate cases involving delinquency without a jury is not violative of due process or Sixth Amendment. D.C. Code §§ 16-2301 et seq., 16-2316(a); U.S. Const. Amends. 5, 6. In re J.T., 290 A.2d 821, 1972 D.C. App. LEXIS 385 (1972), writ of certiorari denied by 409 U.S. 986, 93 S. Ct. 339, 34 L. Ed. 2d 252, 1972 U.S. LEXIS 839 (1972).

### Jurisdiction.

#### — Criminal charges, jurisdiction.

By excluding from definition of "child" 16- and 17-year-olds who are charged with certain serious offenses, statutory provision for trying juvenile as adult automatically terminates jurisdiction of Family Division and transfers jurisdiction to Criminal Division. D.C. Code 1981, § 16-2301(3). Partlow v. United States, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Although juvenile was acquitted of charge of assault with intent to commit murder which authorized transfer to Criminal Division of Superior Court to be prosecuted as adult, Criminal Division did not thereby lose jurisdiction, but instead retained jurisdiction until final disposition of lesser-included and related offenses which ended in deadlock and mistrial; just as mistrial resulting from hung jury would not terminate jeopardy, neither did it terminate pendency of "charge" within meaning of transfer statute. D.C. Code 1981, § 16-2301(3)(A). Partlow v. United States, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Once United States Attorney charges individual with crime enumerated by statute, individual is properly presented to Criminal Division and Family Division jurisdiction is terminated from that juncture, with accused then receiving full panoply of protections available in adult court, although court does not act in *parens patriae* role as in Family Division; statute provides that term "child" does not include individuals 16 or older who is charged by United States Attorney with enumerated offenses. D.C. Code 1981, § 16-2301(3)(A). Catlett v. United States, 545 A.2d 1202, 1988 D.C. App. LEXIS 109 (1988), writ of certiorari denied by 488 U.S. 1017, 109 S. Ct. 814, 102 L. Ed. 2d 803, 1989 U.S. LEXIS 251, 57 U.S.L.W. 3453 (1989).

Family division did not cease to have jurisdiction over juvenile after adult criminal charges had been filed against him for events which occurred before events which were involved in juvenile delinquency proceeding. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h). In re

M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

Pendency of assault charges against juvenile when charges of possession with intent to distribute heroin were filed immutably committed possession charges to jurisdiction of Criminal Division, and subsequent dismissal of assault charges did not retroactively deprive Criminal Division of jurisdiction over possession charges. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h). Montgomery v. United States, 521 A.2d 1150, 1987 D.C. App. LEXIS 534 (1987).

Pending criminal prosecution of 16-year-old defendant for second-degree murder, under statute deeming an individual not to be a "child" when certain serious offenses are charged, constituted a transfer of defendant to the Criminal Division within meaning of authorizing statute so that Family Division was automatically deprived of jurisdiction over obstruction of justice charge placed against defendant for allegedly using "threats and force" against government witness in the second-degree murder case pending against him in the Criminal Division. D.C. Code §§ 16-2301(3)(A), 16-2307(a-h), (a)(1), 22-703(a). In re C.S., 384 A.2d 407, 1977 D.C. App. LEXIS 247 (1977).

Once an individual who is 16 years of age or older has been charged by United States attorney with a crime pursuant to statute which deems an individual not to be a child when certain serious offenses are charged that individual is deemed transferred for criminal prosecution within meaning of authorizing statute, and the Family Division's jurisdiction is thereby terminated, subject to restoration as prescribed, over a subsequent delinquent act for which there is a criminal statute equally applicable to adults. D.C. Code §§ 16-2301(3), (3)(A), 16-2303, 16-2307, 16-2307(a, h). In re C.S., 384 A.2d 407, 1977 D.C. App. LEXIS 247 (1977).

A defendant's asserted right to disposition of charge in juvenile proceedings is forever lost if not resolved in his or her favor before jeopardy has attached. D.C. Code §§ 16-2301(3), 16-2302, 16-2302(b), 16-2307, 22-1801(a, b), 23-1327. Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, did not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to family division for disposition. D.C. Code §§ 11-1101(13), 16-2301(3)(A, B). Brown v. United States, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

Family Division jurisdiction attaches to a violent crime committed by a person who is between the ages of 16 and 18 only if United States Attorney declines to prosecute. D.C.



Code § 16-2301(3). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

#### — In general.

Trial court's jurisdiction over neglected child does not lapse with expiration of commitment order. D.C. Code 1981, § 16-2322. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's jurisdiction over neglected child did not end merely because trial court declared that its authority would end on certain date, especially where trial court noted that such words were not intended to be statement of law, but were merely expression of exasperation aimed at dislodging administrative inertia. D.C. Code 1981, § 16-2322. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court retained its subject matter jurisdiction over neglected child after date when commitment order was no longer in effect, where court did not dismiss neglect petition before government filed motion to extend commitment, but instead court subsequently extended commitment nunc pro tunc. D.C. Code 1981, § 16-2322(b). *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's subject matter jurisdiction over neglected child did not lapse when Government failed to file motion to extend child's commitment and court acted sua sponte to extend commitment order. D.C. Code 1981, § 16-2322(b). *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

As general rule, family division of superior court has exclusive jurisdiction over juveniles accused of delinquent acts that would be criminal if committed by person 18 years of age or older. D.C. Code 1981, §§ 11-1101(13), 16-2301(3). *Lucas v. United States*, 522 A.2d 876, 1987 D.C. App. LEXIS 309 (1987).

Generally, person accused of committing a delinquent act before his or her eighteenth birthday, which act would be criminal if committed by an adult, is accorded noncriminal treatment in the family division of the superior court. D.C. Code 1981, § 16-2301(3). *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

The 1970 amendment to District of Columbia Code limiting jurisdiction for juvenile offender purposes, to age of 16 when an individual of that age or beyond is charged by United States Attorney with enumerated violent crime was meant to work a substantive contraction of Juvenile Court's prior jurisdiction. D.C. Code § 16-2301(3). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

Where juvenile is alleged to be delinquent on basis of violation of federal charge, the Family Division (Juvenile Branch) of the Superior

Court, has primary, but not exclusive, jurisdiction over the matter. D.C. Code § 16-2301(7); 18 U.S.C. § 5031 et seq. *District of Columbia v. P.L.M.*, 325 A.2d 600, 1974 D.C. App. LEXIS 277 (1974).

Under statute which gives Family Division of the Superior Court jurisdiction over a child charged with a delinquent act, including an offense under the law of the District of Columbia or of a state or under federal law, act charged as a violation of a federal statute comes within the jurisdiction of the Family Division (Juvenile Branch) of the Superior Court. D.C. Code § 16-2301(7). *District of Columbia v. P.L.M.*, 325 A.2d 600, 1974 D.C. App. LEXIS 277 (1974).

Mere fact that proof at suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles tended to show that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert proceedings, administrative in character, into a judicial proceeding of kind Congress assigned exclusively to juvenile court. D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 11-1551, 16-2301. *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

#### — Waiver, jurisdiction.

Until it is determined whether a person is a "child" within statutory definition, there is no family court jurisdiction; therefore, a fortiori, there can be no waiver of jurisdiction. D.C. Code §§ 11-1101, 16-2301. *United States v. Bland*, 472 F.2d 1329, 1972 U.S. App. LEXIS 7659 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975, 1973 U.S. LEXIS 2396 (1973).

Superior Court may assume jurisdiction over a juvenile charged with violation of federal law whether or not the United States district court waives its jurisdiction under a "surrender statute." D.C. Code § 16-2301(7); 18 U.S.C. § 5001. *District of Columbia v. P.L.M.*, 325 A.2d 600, 1974 D.C. App. LEXIS 277 (1974).

#### Law of the case.

Trial court's statement declaring that its authority over neglected child would end on certain date did not become law of the case which would prevent court from reconsidering its ruling at later date, where trial court disavowed its words at next hearing in light of established caselaw. D.C. Code 1981, § 16-2322. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

#### Legal custody.

Family division of superior court did not have authority to order the Department of Human Resources to pay for specific treatment program for delinquent juvenile, while court retained custody of juvenile on probation, since

family division can order services from agency only pursuant to transfer of legal custody to agency. D.C. Code §§ 3-120, 16-2301(21), 16-2320(a)(5)(i). In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

When juvenile offender was committed to custody of social rehabilitation administration, superior court relinquished its authority to determine the appropriate measures needed to insure rehabilitation, and administration, under authority of mayor's office, was given exclusive supervisory responsibility over juvenile and had sole authority to determine appropriateness of aftercare program. D.C. Code § 16-2301(21); D.C. Code (1967 Ed. Supp. IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

Superior Court was without authority to revoke juvenile offender's aftercare status following his commitment to the legal custody of the social rehabilitation administration and to order his placement at residential center, after court found that juvenile offender had committed two curfew violations. D.C. Code §§ 16-2301 to 16-2338, 16-2301(21), 16-2320(a), (a)(5), (c), 16-2327; D.C. Code (1967 Ed. Supp. IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

#### **Neglect and abuse proceedings, generally.**

Child neglect is not criminal offense under District of Columbia law. D.C. Code 1981, § 16-2301 et seq. *Raboya v. Shrybman & Assoc.*, 777 F. Supp. 58, 1991 U.S. Dist. LEXIS 16381 (1991).

Grandmother who had an in loco parentis relationship with adolescent female child did not neglect child when she severed that relationship by choosing not to allow child to return home after she had left and by failing to respond to inquiries from Child and Family Services Agency (CFSA); grandmother did not force child to leave, child told grandmother before leaving that she was going to her godmother's house, grandmother was aware that her niece thereupon called the police, reported that child was a runaway, and gave the police the godmother's address, and godmother telephoned the police who came to her house, picked up child, and took her to CFSA, where she stated she did not wish to return to grandmother's home. In re K.J., 11 A.3d 273, 2011 D.C. App. LEXIS 15 (2011).

Incarcerated mother neglected adolescent daughter by failing to arrange care for daughter during 30-day investigation by Child and Family Services Agency (CFSA), beginning after daughter voluntarily left grandmother's home and culminating in CFSA's taking daughter into custody. In re K.J., 11 A.3d 273, 2011 D.C. App. LEXIS 15 (2011).

Child's out-of-court statements, that she had trouble due to her frequent moving between

caretakers and that her grandmother yelled and cursed at her while she was in grandmother's care, were not against child's interest so as to be admissible in neglect proceeding against mother as admissions of a party opponent; child's statements about her travails supported her interest at time of trial in being adopted by her foster mother. In re K.J., 11 A.3d 273, 2011 D.C. App. LEXIS 15 (2011).

For purposes of statute defining a "neglected child" as a child who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused, an individualized finding of imminent danger must be made for each child. In re L.H., 925 A.2d 579, 2007 D.C. App. LEXIS 325 (2007).

In domestic relations proceedings initiated on complaint for custody of parents' child filed by married couple, who had been appointed third-party custodians of child in ongoing neglect proceedings against parents, trial court was not authorized to grant permanent custody of child to couple; trial court's procedure effectively bypassed the extensive protections for the parent and child that govern neglect proceedings. *W.D. v. C.S.M.*, 906 A.2d 317, 2006 D.C. App. LEXIS 499 (2006).

Evidence was sufficient to adjudicate child as neglected on basis that child was regularly exposed to illegal drug-related activity in the home; record reflected that passers-by in the neighborhood knew drug activities were taking place in the child's home, that one of the relatives living in the home admitted that she had been selling drugs from the home but then had ceased such activity and removed the drugs from the home upon being tipped off that the police knew about such drug activity, and that an unsecured weapon and ammunition were still in the home where child lived when the police executed a search warrant as part of their successful "sting" operation. In re De.S., 894 A.2d 448, 2006 D.C. App. LEXIS 137 (2006).

Neglect does not require a finding of parental fault, only the inability or unwillingness to provide proper care for the child; therefore, such inability based on the parent's mental capacity may support an adjudication of dependency based on neglect. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

In a neglect proceeding the court may take into account any history of, but also the reasons for, neglect, such as chronic indifference, carelessness, dereliction, inability to perform, and others. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

The best interests of the children are of paramount importance in neglect proceedings, and the court must consider the entire mosaic



in making its determination. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Trial court findings that mother's children were neglected based on the children being without proper parental care or control and based on mother failing to discharge her responsibilities to the children because of mental incapacity were not mutually exclusive and contradictory; the two findings were independent of each other, the court's finding of neglect based on lack of parental care and control was based on the condition of the children, and the finding that mother was unable to discharge her responsibilities due to mental incapacity was based on mother's fitness as a parent and her ability to provide care. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

An individualized finding of imminent danger must be made for each child subject to neglect adjudication based on finding that child is in imminent danger of being abused and that child's sibling or another child in same household has been abused; finding of imminent danger does not necessarily follow from the fact that a sibling has been abused, but rather court must be apprised of the entire mosaic and must address the risks attendant on removing a child from his home as well as those involved in keeping the child where he or she is. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

An adjudication of neglect based on finding that child is in imminent danger of being abused and that child's sibling or another child in same household has been abused requires the court to make two separate and independent findings: first, that a sibling or another child in the same household has been abused, and second, that the child in question is in imminent danger of being abused. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Though physical or mental discipline of a child is permissible in appropriate situations, the discipline, in order to not constitute abuse in neglect proceeding, must be reasonable under the facts and circumstances of the case. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

The relevant focus for the court under statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, is the children's condition, not the parent's culpability. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Trial court order committing mother's three children to the custody of the Department of Human Services (DHS) was not an abuse of discretion; evidence supported trial court finding of neglect. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Evidence was sufficient to support finding that mother failed to protect her children from boyfriend's abuse and could not explain her daughter's injuries, so as to justify a finding of neglect; collective testimony of witnesses, including police detective, pediatric resident at children's medical center, a pediatrician, a therapist and social worker, a teacher, and children's natural father, indicated that there were bruises on daughter's buttocks, that she had stated that mother's boyfriend spanked her on her bare buttocks in a public park, that daughter told mother about the spanking and mother said "good, I'm going to spank you again," and that son said, after he had accidentally urinated on the wall, that mother's boyfriend made him lick up the urine. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Where a parent or parents are chemically dependent, the trial court in a child neglect proceeding must consider whether the parent otherwise cared for, or made arrangements for the care of, the minor child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Fact that process of surrendering child into custody of Child and Family Services Agency (CFSA) was initiated at the behest of CFSA, rather than by child's caretaker, was of no legal significance in finding child to be neglected, where mother was unable to care for child, and caretaker stated her intention to discontinue caring for him because of the demands of rearing her own children. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

A neglect finding should not result where a capable parent or guardian shares physical custody and responsibility for the child with the addicted parent and there is no evidence of actual or imminent harm from the addicted parent, even though the parent is chemically dependent. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Expert testimony was not required to establish that mother's alcohol abuse affected her ability to provide parental care for her 13-year-old child, as basis for adjudicating the child as a neglected child; alcohol intoxication was a matter of common knowledge. In re B.L., 824 A.2d 954, 2003 D.C. App. LEXIS 218 (2003).

Requirement, under statute defining an "abused" child entitled to legal protection, that corporal punishment be reasonable under the facts and circumstances of the case is an objective test that does not turn on the existence of parental malice. *Newby v. United States*, 797 A.2d 1233, 2002 D.C. App. LEXIS 105 (2002).

Comments of trial judge in neglected child proceeding, expressing impatience with biological father's counsel, did not display impermissible hostility and bias toward father; judge was seeking to ensure that counsel's sometimes inartful questions were relevant and asked in the proper manner, i.e., with the proper foun-

dation or factual predicate, and counsel made no motion requesting the judge to recuse herself. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

In proceedings on a neglect petition, the court must act in the child's best interest and may not expose the child to serious risk of harm. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

At time of stipulation that children were neglected due to death of their mother, their maternal grandmother was not their custodian, and thus, statute making death of a parent insufficient to establish neglect unless custodian has been deemed neglectful or abusive did not apply to require that grandmother be adjudicated neglectful before stipulation could be accepted, even if grandmother cared for children in loco parentis for a time after the mother's death, where children were being cared for by their grandfather, pursuant to court order, at time of stipulation. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

Acceptance of stipulation that six children were neglected due to death of their mother was warranted, even though children were in care of their grandfather under court order at time of stipulation, where grandfather represented that he was unable to adequately care for his grandchildren without government assistance. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

Grandmother's failure to object to neglect stipulation involving her six grandchildren at time it was tendered in open court precluded her from objecting to it after the fact, even though she was the only party named in the original neglect petition and did not sign the stipulation, where she was represented by counsel at the fact-finding hearing and, at time of stipulation, was no longer a custodian or guardian of children and no longer charged with neglect. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

The trial court in a child neglect proceeding ought not to be passive in the face of what it recognizes is a deficient presentation of evidence; in such a case the court may and should take affirmative steps to ensure that it has enough evidence before it to make an informed decision. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

Trial court did not have authority to remove custody of son from mother and award permanent custody to maternal grandmother, in consolidated divorce and neglect proceedings, where neither parent was alleged to have neglected the boy, and no neglect proceeding was ever brought with respect to him. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2301 et seq. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

An adjudication of neglect focuses on the misconduct of the parent in relationship to the child's welfare. D.C. Code 1981, § 16-2301(9)(A-F). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

In neglect proceeding, the disposition hearing generally follows an adjudication that the child has been neglected and focuses upon plans affecting the child's future care and custody. D.C. Code 1981, § 16-2301(9). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

Term "neglect" of child, warranting protective intervention of state, is by its very nature the equivalent of negligence, that is, implying habits or omissions of duty or patterns of neglect. D.C. Code 1981, § 16-2301(9). In re T.G., 684 A.2d 786, 1996 D.C. App. LEXIS 238 (1996).

Best interests of child is standard in neglect cases. D.C. Code 1981, § 16-2320(a). In re L.J.T., 608 A.2d 1213, 1992 D.C. App. LEXIS 147 (1992).

Court must focus on child's welfare in evaluating proper temporary custody of neglected child. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Court must apply objective standard in determining whether parental action constitutes abuse. D.C. Code 1981, § 16-2301(9)(A). In re S.K., 564 A.2d 1382, 1989 D.C. App. LEXIS 203 (1989).

The focus of an allegation under paragraph (9)(B) is on the condition of the child, not on the failure of the parent to exercise her lawful duties. In re A.J., 120 WLR 725 (Super. Ct. 1992).

In order for physical discipline to be acceptable, it must be administered by a parent as a considered response to misconduct and be applied in a tempered, controlled manner with as little violence and consequent possibility for actual physical injury as possible, given the age of the child and the attendant circumstances. In re U.F., 118 WLR 541 (Super. Ct. 1990).

Differences in disciplining children that are based on varying cultural or ethnic standards have no legitimate substantive role in the determination of whether corporal punishment of children is reasonable or excessive. In re U.F., 118 WLR 541 (Super. Ct. 1990).

A history of increasingly violent, unconsidered, almost reflexive parental reaction may well support a finding of abuse even where the specific incident which brought the case before the court did not result in an observably serious injury to the child, as the court must seek to protect the child from future risk of harm. In re U.F., 118 WLR 541 (Super. Ct. 1990).

Infant child, with life-threatening heart condition, whose parents refuse to allow corrective surgery, may be adjudicated neglected child under paragraph (9)(B) of this section and committed for medical treatment under subsec-



tion (a) of § 16-2320. In re Adam L., 111 WLR 25 (Super. Ct. 1983).

### **Parens patriae.**

The court acts in a child neglect proceeding as *parens patriae* and has the paramount obligation and broad authority to protect the best interests of the child where the parent is unwilling or unable to do so, and, to fulfill its obligation, the court has a duty to learn as much as possible about the entire situation before it. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In its role as *parens patriae* in neglect proceedings, court must act to protect best interest of child; neglect proceedings are initiated to protect child's best interests where parent is unwilling or unable to do so, and, following adjudication of neglect, court is required to enter dispositional order meeting best interest of child standard. D.C. Code 1981, §§ 16-2301, 16-2320. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

Court's *parens patriae* role in neglect proceeding comes into play before adjudication of neglect, even though corporation counsel also has *parens patriae* responsibilities. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Court's *parens patriae* power in neglect case must be exercised in proper circumstances and within statutory constraints. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

In neglect proceedings, both court and corporation counsel have *parens patriae* role which requires each to act to assure best interest of child at every stage of proceeding. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Court's *parens patriae* role in neglect case does not override decision by corporation counsel to dismiss based on good-faith determination of insufficient evidence. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

*Parens patriae* role allows court with jurisdiction of neglect case to provide relief necessary to protect best interests of child. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S.

1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Parties.**

Evidence was sufficient to support finding that great-aunt was acting in *loco parentis* toward child, as required to support child's adjudication of neglect under statute defining neglect as committed by a parent, guardian, or custodian, and defining custodian to include a person acting in *loco parentis*; record showed that the great-aunt ensured that child was up and ready for school on time, that great-aunt picked child up from the bus stop after school and monitored his studies, that great-aunt oftentimes prepared his meals and made certain that he went to bed on time, and that great-aunt purchased and laundered clothing for him. In re De.S., 894 A.2d 448, 2006 D.C. App. LEXIS 137 (2006).

Corporation counsel has exclusive authority to file neglect petition, and District of Columbia must be party to neglect proceeding. D.C. Code 1981, § 16-2305(c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Presumptions and burdens of proof.**

In a child neglect proceeding, the District of Columbia has the burden of proving by a preponderance of the evidence that a child is neglected. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

For government to meet its burden in a neglect proceeding of proving that a deprivation was not due to a parental lack of financial resources based on evidence that the parent had sufficient financial resources to enable her to care properly for her child, for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, it must appear, and not just be presumed, that the financial assistance was truly enough in the circumstances. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

To meet its burden in a neglect proceeding of proving that a deprivation was not due to a parental lack of financial resources for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, the government may present evidence that the parent had, or had available, sufficient financial resources to enable her to care properly for her child, and such could take the form of evidence that the parent was receiving or was eligible to receive public assistance and other benefits that she reasonably could have been expected to use to remedy the deprivation

in question. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In establishing a prima facie case that deprivation was due to reasons other than a parent's lack of financial means for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, deprivation visited on the child is not required to be completely unrelated to the parent's lack of financial resources, rather, it should be enough if the evidence shows that parental poverty was not the only or the "but for" cause. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Once the government has presented a prima facie case that deprivation is due to reasons other than a lack of financial means for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, the burden of production shifts to the parent to show that financial deprivation is related to the neglect. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

To meet its burden in a neglect proceeding of proving that a deprivation was not due to a parental lack of financial resources for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, the government can present affirmative evidence, or it may be self-evident, that the deprivation is due to reasons other than the parent's lack of financial means. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Trial judge could properly find that government met its burden of proof to show that neglect of children was not due to mother's financial inability, for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means; mother had failed many times to keep feces off the floor, to dispose of rotten food and other trash, to clean the kitchen, and to complain and demand that maintenance and repairs and exterminations be performed properly. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

When deprivation is established under statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means, there is no requirement to prove that the child has already sustained actual injury as a result. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

A chemically dependent parent is not neglectful of her child per se. In re W.T.L., 825 A.2d 892, 2002 D.C. App. LEXIS 801 (2002).

In a child neglect proceeding, the District has the burden of proving by a preponderance of the evidence that a child is neglected, as statutorily defined. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

An inference of child neglect is dependent upon the rationality of the connection between the facts proved and the ultimate fact presumed. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

In child neglect proceedings, burden is on the Department of Human Services (DHS) to prove medical neglect by a preponderance of the evidence. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

Plain language of neglect statute requires the government to establish both the abuse of the sibling and imminent danger to the child before a finding of neglect may be made. In re M.W., 756 A.2d 913, 2000 D.C. App. LEXIS 186 (2000).

In child neglect proceeding, District of Columbia has burden of proving by preponderance of evidence that child is neglected. D.C. Code 1981, § 16-2301. In re E.H., 718 A.2d 162, 1998 D.C. App. LEXIS 192 (1998).

Government must prove by preponderance of the evidence that child is abused. D.C. Code 1981, § 16-2301(9)(A). In re S.K., 564 A.2d 1382, 1989 D.C. App. LEXIS 203 (1989).

Generally, proof that failure of proper care of child was not due to parent's lack of financial means is a part of government's burden of proof under statute defining neglected child as one who is without proper parental care or control and deprivation is not due to lack of financial means of parent, guardian or other custodian; however, there may be instances in which neglect is completely unrelated to financial status of parent and it is perfectly proper for government to meet its burden to prove lack of proper care and control without also providing affirmative showing of parent's financial status. D.C. Code 1981, § 16-2301(9)(B). In re D.C., 561 A.2d 477, 1989 D.C. App. LEXIS 129 (1989).

The age of the child, five weeks, and the existence of serious, unexplained injuries, two broken arms, were rationally related to the inference of neglect which the trial court was permitted by statute to draw and, hence, were a proper basis for entry of an order declaring child to be neglected and directing that child be committed to the custody of Social Rehabilitation Administration for a period not to exceed two years. In re L.E.J., 465 A.2d 374, 1983 D.C. App. LEXIS 446 (1983).

Due to the difficulty in obtaining direct evidence in child abuse or neglect proceedings, an inference of neglect may be drawn in those proceedings when the child is a minor and his or her injuries are unexplained. In re L.E.J., 465 A.2d 374, 1983 D.C. App. LEXIS 446 (1983).

Statute authorizing an inference of neglect to be drawn when there is evidence of illness or injury to a child who was in custody of his or her, guardian, or custodian for which parent,



guardian or custodian can give no satisfactory explanation was not unconstitutionally applied in situation where child was five weeks old with two broken arms which evidenced existence of serious, unexplained injuries. In re L.E.J., 465 A.2d 374, 1983 D.C. App. LEXIS 446 (1983).

The term "custody," within statute authorizing an inference of neglect to be drawn when there is evidence of illness or injury to a child who was in custody of his or her parent, guardian, or custodian for which the parent, guardian, or custodian can give no satisfactory explanation, must not be narrowly construed to mean "within the parent's physical control," but must be given an expansive meaning so as to include sum of parental rights with respect to the rearing of a child, including its care. In re L.E.J., 465 A.2d 374, 1983 D.C. App. LEXIS 446 (1983).

Government failed to sustain its burden of proving by a preponderance of evidence that respondent was neglected under paragraph (9)(B). In re A.J., 120 WLR 725 (Super. Ct. 1992).

#### **Protective supervision.**

In deciding to terminate commitment for care of neglected child after child reached age of 18 years but before he attained age of 21 years, trial court was required to determine whether commitment was no longer necessary to safeguard child's welfare and whether termination was in child's best interest and could not base such decision solely on interests and safety of public. D.C. Code 1981, §§ 16-2301, 16-2310(a), 16-2320(a), 16-2322, 16-2323(d), (d)(2), 30-401. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

Statute defining "protective supervision" granted trial court authority to revoke protective supervision order regarding care of child at any time while order was in effect, and fact that provision was of definitional nature was not determinative. D.C. Code 1981, § 16-2301(19). In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

#### **Purpose.**

The civil neglect statute is a remedial enactment designed to protect the welfare of neglected and abused children, and it must be liberally construed to achieve that end. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

Purpose of child neglect statute is to promote best interest of allegedly neglected children; relevant focus for court is child's condition, not parents culpability, other than lack of financial means. D.C. Code 1981, § 16-2301(9)(A, B, F). In re B.C., 582 A.2d 1196, 1990 D.C. App. LEXIS 305 (1990).

Objective of this subchapter's detailed, integrated statutory scheme is to require that the

Family Division, armed with the best information available and a wide array of options, will devise that disposition which offers the best prospect for rehabilitating the subject offender and thus for protecting the public interest as well. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

#### **Remedies.**

Proper means by which plaintiff may seek redress for alleged failure to comply with state and local child protection statutes is action for damages under state and local law. Doe by Fein v. District of Columbia, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

#### **Residual rights and responsibilities.**

Trial judge's order authorizing appearance of neglected child, whose unwed father's parental rights remained intact, on television program, which was designed to bring potentially adoptable children to attention of adoptive parents, did not interfere with father's statutory and constitutional rights as a parent; child was in legal custody of Department of Human Services (DHS), and judge's limited order did not purport to deprive father of any of his residual rights or responsibilities. D.C. Code 1981, § 16-2301(22). In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

#### **Review.**

While there may be circumstances in which courts would be entitled to review the exercise of prosecutorial discretion as to whether a person should be charged as a juvenile or as an adult, those circumstances would necessarily include the deliberate presence of such factors as race, religion or other arbitrary classification. D.C. Code § 16-2301(3)(A). United States v. Bland, 472 F.2d 1329, 1972 U.S. App. LEXIS 7659 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975, 1973 U.S. LEXIS 2396 (1973).

Where two other judges of the United States District Court for the District of Columbia had ruled with conflicting results on whether a defendant between the age of 16 and 18 who is charged with certain specified felonies is denied procedural due process because they may be tried in adult court without transfer hearing whereas certain other juveniles are entitled to transfer hearing before adult proceedings can be commenced, the court would consider the issue as if it were before the court as matter of first impression. D.C. Code §§ 16-2301(3)(A)(i), 16-2307; U.S. Const. Amend. 5. United States v. Alexander, 333 F. Supp. 1213, 1971 U.S. Dist. LEXIS 11355 (1971).

An appellate court is constrained to uphold a trial court's finding of child neglect unless the trial court's judgment is plainly wrong or without evidence to support it. In re De.S., 894 A.2d 448, 2006 D.C. App. LEXIS 137 (2006).

When the Court of Appeals evaluates an appellant's claim that the evidence is insufficient to support a finding of neglect, it must consider the evidence in the light most favorable to the government, giving full play to the right of the judge to determine credibility, weigh the evidence, and draw reasonable inferences. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Trial court's error in admitting hearsay testimony of maternal aunts, as mother's statements regarding violence father allegedly inflicted upon her, was not harmless in neglect proceeding; all four aunts testified to out-of-court statements by mother attributing abusive conduct to father, hearsay accounted for greater part of government's evidence, and without it, record would have been entirely different, and thus, error in admitting hearsay testimony could not fairly be characterized as insignificant, and it was not highly probable that hearsay did not appreciably affect result. In re Ty.B., 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (2005).

Counsel's objections were sufficient to preserve father's claim that out-of-court declarations attributed to mother by maternal aunts, concerning violence allegedly inflicted upon mother by father, were inadmissible hearsay in neglect proceeding; judge stated that she had admitted evidence over objection, judge had implicitly reproved father's counsel for again raising point challenging admission of evidence by stating that court had already ruled upon issue, and to require counsel to object again would be to require pointless formality. In re Ty.B., 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (2005).

In determining whether the District of Columbia established by a preponderance of evidence that a child is neglected, Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Mother failed to preserve for appeal her argument that she could not have neglected her children based on her alleged abuse of non-sibling child who had been living with her and her husband, because she did not stand in loco parentis vis-a-vis non-sibling child, as she asserted this argument for the first time on appeal. In re Te.L., 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

Remand was required in child neglect proceeding, which was predicated on serious and disabling injuries non-sibling child suffered while in parents' care, to permit trial court to take into consideration factual and legal developments, including amendment of statutory definition of "neglected child," to include one

"who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused," that had occurred since court's original decision. In re Te.L., 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

In assessing evidentiary sufficiency on appeal in a child neglect proceeding, the government is entitled to the benefit of all reasonable inferences from the evidence, and no distinction can be drawn between direct and circumstantial evidence. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

In assessing the evidentiary sufficiency in a child neglect proceeding, an appellate court must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Trial court's denial of mother's motion for reconsideration of order terminating her parental rights cured defect in her appeal occasioned by her having filed notice of appeal prior to ruling on motion for reconsideration. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Mother had no standing to appeal finding in neglect adjudication that she was unable to take care of the children while imprisoned for child abuse; even if her appeal were successful, mother could not have obtained any practical relief, for neglect adjudication based on her abuse of her son, and ensuing consequences of that adjudication, would be undisturbed. In re Z.C., 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

Mother, who did not appeal from child neglect adjudication, lacked standing to ask the Court of Appeals to strike from trial judge's order, as unsupported by the evidence, one of the three findings supporting adjudication, namely, finding that she was incarcerated and therefore unable to care for her children. In re Z.C., 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

Mother's live-in paramour had a reputational interest sufficient to provide him with standing to challenge finding that he abused mother's daughter, although he could not complain of the disposition of mother's three children in the absence of an appeal by mother. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

If a claim of evidentiary insufficiency is raised on appeal in a child neglect proceeding, the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to



support it. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

On appeal from a judgment finding a child to be neglected, the Court of Appeals must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Deference is due to the trial court's determination of child abuse or neglect, and the Court of Appeals will not second-guess the trial judge on a very difficult call. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Admission of evidence of father's failure to complete alcohol treatment program was not reversible error in child neglect proceeding, where father testified on direct examination that he did not drink excessively, and father's counsel did not object to question on cross-examination as to whether father was aware of pretrial order requiring that he submit to alcohol treatment. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

Even assuming stipulation that children were neglected due to death of their mother was somehow infirm, any error in accepting it did not prejudice grandmother, and thus was not reversible error, even though she did not sign stipulation and was only named party in original neglect petition, where government dropped neglect petition against her as a result of stipulation, she had opportunity to contest her alleged neglect at disposition hearing at which she sought custody, and trial court based neglected status on death of children's mother and impecuniosity of their grandfather who had court-ordered custody pending resolution of matter. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

In evaluating on appeal whether proof submitted by the Department of Human Services (DHS) is sufficient to support adjudication of child as neglected, the Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences; however, the trial court's judgment must be set aside if it is plainly wrong or without evidence to support it. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

On remand from determination of Court of Appeals that evidence was insufficient to support adjudication of child as medically neglected, trial court would not be directed to terminate the proceedings; rather it would be given discretion to decide whether the hearing should be reopened for the presentation of expert medical testimony to determine if parent's care of her child's persistent eczema was inadequate, or to decide whether an alternative course of action would be appropriate. In re

M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

In determining whether trial judge erred in finding that child was neglected, appellate court used the word "neglected" in its limited legal sense within meaning of statute, providing that neglected child is a child who is without proper parental care or control, and not in the sense that mother had failed in her duty to her child in any other respect. D.C. Code 1981, § 16-2301(9). In re E.H., 718 A.2d 162, 1998 D.C. App. LEXIS 192 (1998).

Review by Court of Appeals of trial court's decision to transfer juvenile for prosecution as adult should be supervisory in nature and deferential in attitude. In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Court of Appeals reviews trial court's judgment for termination of parental rights only for abuse of discretion. D.C. Code 1981, § 16-2353(a). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Appeal challenging temporary placement of child in need of supervision (CINS) in detention facility, on ground that statute prohibited placement of children adjudicated in need of supervision in a facility for delinquents, was not rendered moot by child's subsequent placement in group home, considering that limited time that child remains in detention facility while awaiting placement in a foster home or an institution prevents full litigation of issue before cessation of challenged action. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Court of Appeals would not dismiss juvenile's appeal from trial court's adjudication of delinquency, even though juvenile twice absconded from custody of juvenile authorities while appeal was pending; proceeding involved juvenile and total time during which juvenile was out of control of juvenile authorities was not of such extended duration that government asserted it would suffer any prejudice in possible retrial of case. In re S.H., 570 A.2d 814, 1990 D.C. App. LEXIS 45 (1990).

In child neglect case, timely motion by mother for reconsideration of neglect finding tolled time for appeal. Court of Appeals Rule 4, Pt. II(a)(2). In re A.B., 486 A.2d 1167, 1984 D.C. App. LEXIS 581 (1984).

In child neglect case, appeal time began to run upon superior court's filing of dispositional order. In re A.B., 486 A.2d 1167, 1984 D.C. App. LEXIS 581 (1984).

Whether Department of Human Services had met its burden of proof in action involuntarily terminating parental rights was not within province of Court of Appeals. D.C. Code 1981, § 16-2353. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

On appeal of involuntary termination of parental rights, Court of Appeals must satisfy

concern that there is sufficient record evidence such that possibility of an erroneous judgment did not lie in equipoise between the two sides, using the preponderance standard; nevertheless, it need not require evidence be so compelling so as to exclude as nearly as possible the likelihood of a decision that erroneously terminates parental rights. D.C. Code 1981, § 16-2353. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Defendant did not waive his right to appeal determination of government to charge him as an adult, even though he pleaded guilty to an adult charge, where he informed trial court of his concerns about propriety of the charge before jeopardy attached, judgment was not entered, there was no attempt to deceive, and he pled after he had been assured by prosecutor and defense counsel that any challenge based on his status as a child could be raised at a later date. D.C. Code 1981, §§ 16-2301(3)(A), 16-2302, 22-501, 22-3202. Logan v. United States, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

Timeliness of child in need of supervision appeals is governed by 30-day rule applicable to civil cases rather than the ten-day rule for criminal cases. D.C. Code 1973, § 16-2301(8)(A)(iii); Court of Appeals Rule 4, Pts. II, II(a)(1), (b)(1). In re B., 432 A.2d 722, 1981 D.C. App. LEXIS 314 (1981).

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. D.C. Code §§ 16-2301(7), 16-2318, 23-101(f). In re M.W.F., 312 A.2d 302, 1973 D.C. App. LEXIS 396 (1973).

When discipline has been imposed, defendant is entitled to review. D.C. Code §§ 11-741(a)(3), 16-2301 et seq., 16-2327. Langley v. District of Columbia, 277 A.2d 101, 1971 D.C. App. LEXIS 323 (1971).

#### Right to trial.

In proceeding to trial and disposition in delinquency proceedings after United States Attorney charged juvenile with committing armed robbery, family division judge did not violate juvenile's constitutional right to trial by jury, even though alleged purse snatching, which gave rise to delinquency proceedings, occurred after alleged armed robbery. D.C. Code 1981, §§ 16-2301(3), 16-2316(a); U.S. Const. Amend. 6. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

Fact that, in federal jurisdictions other than that of the District of Columbia, juveniles who are charged with violation of federal law and who opt for treatment as an adult have the right of trial by jury does not mean that statute giving Superior Court of the District of Colum-

bia primary jurisdiction over juvenile who is alleged to be delinquent, even though that delinquency is based on violation of federal law, denies equal protection. D.C. Code §§ 16-2301(7), 16-2307. District of Columbia v. P.L.M., 325 A.2d 600, 1974 D.C. App. LEXIS 277 (1974).

#### Rights and responsibilities of parents.

Psychotropic medication did not constitute "ordinary medical care," within meaning of statute providing that possession of legal custody of minor child included responsibility to provide ordinary medical care to child, and thus authority to provide consent to administration of such medication to child upon parental loss of legal custody presumptively constituted "residual parental right," within meaning of statute providing that parents would retain rights normally associated with parenthood upon transfer of legal custody, subject to trial court's responsibility as *parens patriae* to intervene if necessary to protect child's best interest, with result that Child and Family Services Agency (CFSA), which had obtained legal custody of child that had been adjudicated as neglected, lacked authorization to provide consent for administration of child's inpatient psychotropic medication; trial court had not appointed someone other than parents to serve as child's guardian. In re G.K., 993 A.2d 558, 2010 D.C. App. LEXIS 210 (2010).

Evidence that father did not provide for his children financially, had been incarcerated for most of their lives, and faced two to 12 more years in prison supported finding that father was unable to discharge his responsibilities to and for his children because of incarceration, as ground for neglected child ruling. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

That father was not incarcerated on date neglect petition was originally filed did not preclude finding that father was unable to discharge his responsibilities to and for his children because of incarceration, as ground for neglected child ruling, where government moved to amend petition to include fact of incarceration after father's parole was revoked. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Where a parent or parents are chemically dependent, the trial court in a child neglect proceeding must consider whether the parent otherwise cared for, or made arrangements for the care of, the minor child. In re W.T.L., 825 A.2d 892, 2002 D.C. App. LEXIS 801 (2002).

A person standing in *loco parentis* is subject to the same rules as a natural parent with respect to the use of force vis-a-vis a child; moderate and reasonable punishment or correction, exercised in good faith for the benefit of the child, is authorized, but for an abuse of the



right the person standing in loco parentis will be criminally liable, and, a fortiori, subject to a finding of child abuse. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Visitation should be permitted in child neglect proceedings unless the chancellor is convinced that it would be detrimental to the best interests of the infant. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Order in neglect proceedings barring all visitation between father and his sons could not be based on allegation that father sexually abused oldest son, absent factual inquiry and finding as to whether such abuse actually occurred. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Order in neglect proceedings barring all visitation between father and his sons could not be based on father's alleged failures to follow through with individual psychotherapy and domestic violence counseling, to complete parenting classes, and to address his substance abuse problem; uncontradicted evidence showed that father's urine was found to be positive only twice and negative thirty-one times, he was no longer defendant in domestic violence case, which had impaired his eligibility to participate in domestic violence class, and even though his attendance at parenting classes and substance abuse meetings was less than perfect, he had begun to attend. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Order in neglect proceedings barring all visitation between father and his sons could not be based on father's failure to take any active steps to maintain his relationship with his sons until some nine months after they were removed from mother's custody; in absence of evidentiary hearing, father never had opportunity to testify, either about his alleged sexual abuse of one son or about his apparent passivity after sons were removed from mother's home, and father's intellectual resources were limited. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Change of goal in neglect proceedings to adoption was not, standing alone, sufficient to support order barring all visitation between father and his sons; trial court failed to hold hearing on allegation that father sexually abused one son, and it was not clear that reunification would have been abandoned at all if there had been no allegation of sexual abuse. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

In child neglect proceeding based on mother's alleged mental illness and drug abuse, trial judge had statutory authority, over mother's objection, to "waive" her physician-patient privilege with respect to past professional evaluations of her mental condition. D.C. Code 1981,

§ 2-1355. In re O.L., 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

Father's lack of physical custody of his children did not relieve him of his parental responsibilities; thus, court could properly determine that children were neglected by him. D.C. Code 1981, § 16-2301(9)(B). In re B.C., 582 A.2d 1196, 1990 D.C. App. LEXIS 305 (1990).

Mother who was under court supervision in neglect proceeding had right to be represented by counsel when she executed form relinquishing her parental rights. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Any attempt to surrender parental rights through voluntary relinquishment while mother remains under court's neglect jurisdiction must be regarded as a "critical stage" under statute affording parent right to counsel in neglect proceeding. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Amended order in child neglect proceeding permanently terminating natural father's visitation rights violated statutory provision limiting dispositional orders initially to two years, subject to one-year extensions after notice of hearing. D.C. Code § 16-2322. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Trial court was correct in holding that the best interest of the child was the controlling factor in its decision as to whether to give custody of the child to her natural mother, who, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, or to the foster parents with whom the child had lived virtually all her life, despite contention that court ignored the interest of the mother in its decision. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

A single instance of drug use by one parent in front of very small children (who were promptly removed by their aunt) does not make them neglected, especially where there is a non-drug abusing parent in the home and no evidence of any ill effects on the children. In re B.R., 119 WLR 957 (Super. Ct. 1991).

The incapacity or absence of one parent does not make children neglected per se when another, capable parent shares physical custody and responsibility for them and there is no evidence of actual or imminent harm to the children. In re B.R., 119 WLR 957 (Super. Ct. 1991).

Evidence of leaving children with relatives and other babysitters for extended periods of time did not amount to neglect where the children received adequate care and there was no imminent danger. In re B.R., 119 WLR 957 (Super. Ct. 1991).

A child is neglected within the meaning of paragraph (9)(B) of this section where he had attended less than 30 days of school between ages 8 and 14, as the failure of the custodial parent to ensure regular school attendance amounted to a lack of proper parental care. In re LeShawn R., 114 WLR 1109 (Super. Ct. 1986).

In cases of alleged neglect involving deprivation to a child other than educational deprivation or lack of subsistence, the statute is clear on its face that the court must consider whether the injury or endangerment to the child results from improper parental care or control. In re LeShawn R., 114 WLR 1109 (Super. Ct. 1986).

#### **Sibling.**

A "sibling," for purposes of the neglect statute, does not include a child who is neither the biological nor the adopted brother or sister of the children alleged to be neglected. In re M.W., 756 A.2d 913, 2000 D.C. App. LEXIS 186 (2000).

Minor who allegedly died through guardians' abuse was not a "sibling" of two other minors, for purposes of the neglect statute, though deceased minor was the cousin of the two minors and all three lived in the same home and received full time care from the same guardians. In re M.W., 756 A.2d 913, 2000 D.C. App. LEXIS 186 (2000).

#### **Sufficiency of evidence.**

Sufficient evidence supported conclusion that child was neglected based on lack of mother's care and control; mother refused to utilize the services provided to her by the Child and Family Services Agency (CFSA) to aid her in parenting her child, she deliberately refused to take advice from other professionals as to child's proper care, and she exhibited a brash disregard for child's physical and emotional health at a time when child was too young to protect herself against the immediate harms of parental neglect. In re J.R., 33 A.3d 397, 2011 D.C. App. LEXIS 695 (2011).

Substantial evidence supported hearing officer's finding that father's excessive physical discipline of thirteen-year-old son caused son's injuries, thus supporting finding of abuse warranting entry of father's identifying information in Child and Family Services Agency's child protection register; although there was significant evidence that child's physical activities accounted for the scars on his body, father acknowledged using corporal punishment against son, son told social worker and teacher that scar on his cheek came from father's disciplining him, and father's initial vague answers differed from his later specific explanations for marks on son's body. V.K. v. Child & Family Servs. Agency of the D.C., 14 A.3d 628, 2011 D.C. App. LEXIS 31 (2011).

Substantial evidence supported determination, in neglect proceeding against maternal grandmother, that she acted in loco parentis to female adolescent child, where child lived in grandmother's home for approximately seven months, grandmother cooked for her, provided money for her when she could, went to school with her when she was suspended, and made sure that she stayed in the house when she was suspended from school. In re K.J., 11 A.3d 273, 2011 D.C. App. LEXIS 15 (2011).

Evidence supported trial court's finding that three-month-old baby was a neglected child; X-rays of baby's feet revealed fractures of her left first metatarsal (the "big toe") and the ends of her tibias near her ankles, skeletal survey, which x-rayed all the bones in baby's body from multiple views, disclosed a number of additional fractures in her arms and legs, doctor concluded that baby's injuries were likely caused by inflicted blunt force trauma, neither parent was able to account for baby's injuries, and fact that baby's fractures healed and no new fractures occurred in the two-month period following her placement in shelter care was evidence that fractures were not due to a congenital bone disorder. In re A.B., 999 A.2d 36, 2010 D.C. App. LEXIS 343 (2010).

Evidence was not sufficient to support trial court's finding that children were neglected; government introduced no direct evidence or expert witness testimony that either child ever had been abused, injured, or otherwise neglected by parents, five-year-old child had no observable injuries or any other physical sign that she had been mistreated, seven-year-old child denied ever having been hit by an adult, and trial court's finding that three-month-old baby, who was the children's younger sibling, had endured pattern of physical abuse, for which her parents bore responsibility, was not enough to support findings of neglect with respect to the older children. In re A.B., 999 A.2d 36, 2010 D.C. App. LEXIS 343 (2010).

Evidence was sufficient to support trial court's finding that fifteen-year-old child was neglected; child testified that mother beat her, threatened to kill her, prayed aloud that she would not kill her, and conducted "virginity exams" on her, and that this treatment by her mother left her depressed and wanting to commit suicide, psychologist testified that child exhibited symptoms of depression and anxiety and developed post traumatic stress disorder (PTSD) as a result of the vaginal examinations and excessive physical discipline by her mother, and mother frequently beat child for insignificant mistakes or at the slightest provocation. In re K.S., 966 A.2d 871, 2009 D.C. App. LEXIS 40 (2009).

Evidence did not support finding that child was without proper parental care or control based on incident in which mother slapped



child's face and threw her to the floor, as necessary to support neglect adjudication against mother; trial court saw incident as symptomatic of mother's mental instability, but court heard no psychiatric or medical testimony relating mother's past mental condition to the current incident and mother's present capacity to parent, incident did not demonstrate mother's inability to act responsibly as a parent, mother was providing resources, was attentive, and was doing what was necessary to provide care and supervision to child, and fact that mother had reached out to others for help could not be deemed admission of present inability to parent. In re L.H., 925 A.2d 579, 2007 D.C. App. LEXIS 325 (2007).

Evidence did not support finding that child suffered "physical injury" sufficient to constitute abuse or neglect, as result of mother slapping child's face and throwing her to the floor, as necessary to support neglect adjudication against mother; no evidence was presented that, as result of being slapped and thrown to floor, child suffered more than transient pain or minor temporary marks on her forearm, and no evidence suggested that these marks went beyond a temporary bruising. In re L.H., 925 A.2d 579, 2007 D.C. App. LEXIS 325 (2007).

In a challenge to the sufficiency of the evidence in a child neglect proceeding, an appellate court views the evidence in the light most favorable to the government and draws every reasonable inference in the government's favor. In re De.S., 894 A.2d 448, 2006 D.C. App. LEXIS 137 (2006).

Evidence presented during neglect hearing was insufficient to establish that mother was mentally incapacitated to the extent that she was unable to care for her children; testimony from clinical psychologist regarding mother's mental examination were improperly admitted, and the only other evidence of mental incapacity was father's statement that mother functioned at the level of a second-grader. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was sufficient to support the trial court's finding that mother's children were neglected based on being without proper parental care or control; oldest child testified that she, and not mother, took the initiative to protect mother, herself, and younger child from father's violent behavior, expert testified that oldest child was forced to take on the role of "parental child" and be the caretaker of the family, oldest child testified that she and younger child witnessed domestic violence between parents on numerous occasions, and younger child was diagnosed with post-traumatic stress disorder, depression, and suicidal ideation. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was sufficient to support the trial court's finding that child was neglected based on child being without proper parental care or control, even though child did not testify at neglect hearing; father withdrew his motion to have child testify during hearing, child's older sibling testified that she and child witnessed violence between father and mother on numerous occasions, father admitted that he slept in the same bed as child, child gave father a highly sexualized poem, and experts testified that the familial roles in family were severely confused. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was sufficient to support the trial court's finding that child was neglected based on abuse or abandonment by father, even though child did not testify at hearing; child's older sibling testified that child was present during numerous occasions when father abused mother, and that child often hid under the covers in her room during the abuse. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was not sufficient to support finding that youngest child was in imminent danger of being abused and that child's sibling had been abused, and thus did not justify finding of neglect; no evidence existed that spankings inflicted on child were abusive or unreasonable in nature, and mother testified that she did not use a belt on child. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was sufficient to support finding that oldest child was in imminent danger of being abused and that child's sibling had been abused, as to justify finding of neglect; mother admitted to having beaten child with a belt when he misbehaved and did not offer any reason for such a punishment. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was sufficient to support finding that middle child was abused by mother, as to justify finding of neglect; middle child had a bleeding cut over her left eye that was caused by her mother's striking her with a broom handle because child could not locate her school uniform, child had an abrasion on her arm that had been inflicted by her mother two days earlier when she would not sit still while her hair was being groomed, and child had scratch marks around her neck, again stemming from her mother's physical punishment during a previous hair grooming session. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was sufficient to support finding that father neglected his three children; father was incarcerated, father left his children with his live-in girlfriend but did not "discharge his responsibilities" due to his failure to provide girlfriend with any legal right to the children, girlfriend found out that father was incarcerated after the incarceration began, and father

was unable to "discharge his responsibilities" when mother of the children, who was a crack addict, took custody of the children. In re T.T.C., 855 A.2d 1117, 2004 D.C. App. LEXIS 416 (2004), amended by 868 A.2d 859, 2005 D.C. App. LEXIS 38 (D.C. 2005).

Finding that children had been neglected, based entirely on serious and disabling injuries non-sibling child suffered while in parents' care, under portion of neglect statute defining neglected child as one who is "without proper parental care and control \_\_\_\_\_ necessary for his or her physical, mental, or emotional health," was not supported by evidence; trial judge focused entirely on abuse of non-sibling child, little or no testimony was heard or even permitted as to parents' treatment of other children, and thus it could not be shown that any of the individual children was without proper care and control under statute. In re Te.L., 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

Evidence was sufficient to support finding of neglect based on mother's three children being without proper parental care or control or education as required by law, or other care or control necessary for their physical, mental, or emotional health, and the deprivation was not due to mother's lack of financial means; mother's two schoolaged children were chronically tardy, children were unclean, social worker described mother's home as "filthy," mother was uncooperative with social workers, and mother had a history of drug abuse and had tested positive for cocaine one month before the hearing. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Evidence was insufficient to support finding of neglect based on mother being unable to discharge her responsibilities to her three children based on her drug addiction; there was no evidence that connected mother's drug addiction with the neglect of the children. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Absent any direct evidence, such as testimony by the children or other eyewitnesses, that children were present during instances of domestic violence, trial court's finding that father mentally abused his three children based on their having witnessed father's pattern of abusing their mother over a period of time before her death was not supported by the evidence, in neglected child proceeding. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Petition for civil protection order alleging that children's father beat their mother did not support finding in neglected child proceeding that children witnessed domestic violence or that their long-term trauma was the result of what they saw, where nothing in petition indicated that children were present when mother

alleged she was beaten. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Testimony of children's mother's sister concerning mother's swollen lips, contusions, and scratches was insufficient to show that children's father was responsible for the beating or that children were present when beatings occurred, and thus did not support finding in neglected child proceeding that children witnessed domestic violence or that their long-term trauma was the result of what they saw. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Evidence was sufficient to support finding that child was neglected by his mother; mother rarely visited the child, either simply to spend time with him or to ensure that he was receiving the proper care, and caretaker testified that mother failed to provide for the child, although mother had financial means, and mother testified to her persistent use of alcohol and heroin, which caused mother to be repeatedly incarcerated and out of contact with the caretaker and the child. In re W.T.L., 825 A.2d 892, 2002 D.C. App. LEXIS 801 (2002).

Evidence established that mother's alcohol abuse affected her ability to provide parental care for her 13-year-old child, as basis for adjudicating the child as a neglected child; mother was verbally abusive with child, calling him names such as "stupid" and "dumb," mother was upset every time child confronted her about her drinking problem, mother's former boyfriend sometimes had to separate mother and child from "tussling" after child attempted to pour out his mother's beer, and child was embarrassed, frightened, withdrawn, and often retreated to his room for long periods of time. In re B.L., 824 A.2d 954, 2003 D.C. App. LEXIS 218 (2003).

Evidence was sufficient to support finding that mother neglected child by failing to protect child from sexual abuse of child's two older brothers; it was undisputed that mother had been warned that child had allegedly been abused during her visits to the mother's home, as there existed testimony from child's great-aunt that while child's visitation at the mother's home was continuing, child's age-inappropriate sex-related behavior increased. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Evidence was sufficient to support finding that mother's live-in paramour used unreasonable force against mother's daughter; daughter described two instances of physical abuse by paramour, as well as injuries to her head and face, doctor's testimony corroborated the physical injuries daughter described, mother's testimony supported her daughter's account in key respects, demonstrating how paramour struck daughter and that daughter was bleeding as a result, and paramour gave apparently



false exculpatory statements. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence was sufficient to support finding that actions by mother's live-in paramour constituted child abuse, although adolescent daughter was not seriously injured; there was evidence that paramour dragged daughter by her hair with enough force to pull her hair out from its roots leaving her scalp exposed, that he kicked or stepped on her back, and that a few days later he struck her in the face and left her bleeding. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence was insufficient to support finding that daughter's brothers were in imminent danger of being abused due to physical abuse of daughter by mother's live-in paramour and mother's tolerance of it, and thus did not support removal of the brothers from mother's home; gravamen of the evidence was to the effect that brothers were happy in their mother's home and doing well, and there was only evidence of two instances of abuse of daughter. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence of chronic and unexplained sexual injuries in young children while in custody of their parents was sufficient to justify inference of neglect; doctor testified that manipulation of genitals in children was "chronic," indicating that both children were abused on more than one occasion, mother's only explanation was that wounds were caused from bike riding, which theory that was disavowed by doctor's testimony, and doctor also observed that children's wounds healed after they were removed from parents' care. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Finding that father used excessive force on child, such as to constitute physical abuse, was supported in neglect proceeding by evidence that father hit child in stomach in purported effort to teach child how to defend himself in fights, that child was less than 10 years old and was apparently retarded, and that blow caused child to lose air and gasp. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

Finding that father mentally abused child was supported in neglect proceeding by evidence that child was present during episodes of domestic violence that caused injury to mother. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

Evidence was insufficient to support adjudication of child as medically neglected; adjudication was based primarily on parent's admissions about the medical care which she gave child for his persistent eczema, but expert medical testimony was required to establish that

such care was wanting, or that better treatment would have benefited child. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

Evidence warranted finding that child was neglected; child's life was dominated by mother's delusions, child suffered from serious developmental disabilities, and child's condition required immediate attention and treatment. D.C. Code 1981, § 16-2301(9). In re E.H., 718 A.2d 162, 1998 D.C. App. LEXIS 192 (1998).

Trial court's conclusion, in neglect hearing, that children's deplorable living conditions, observed by witnesses on day that children's grandmother died, were not caused by lack of family's financial means was not supported by evidence; only source of family income was portion of maternal grandfather's social security check which grandfather doled out to mother. D.C. Code 1981, § 16-2301(9)(B). In re T.G., 684 A.2d 786, 1996 D.C. App. LEXIS 238 (1996).

Trial court's finding, in neglect hearing, that children were not malnourished was supported by evidence that family was borrowing money to feed children. D.C. Code 1981, § 16-2301(9). In re T.G., 684 A.2d 786, 1996 D.C. App. LEXIS 238 (1996).

Evidence supported trial court's finding that mother's paramour abused child; court expressly credited child's testimony that paramour told child to take off her clothes, told her to touch his "private part," and pulled child down and choked her. D.C. Code 1981, § 16-2301(9)(A). In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Evidence was insufficient to support finding that 25-day-old child was neglected by being deprived of proper parental care, control or subsistence; although physician testified that child, who was brought to hospital waiting room by his parents when his mother sought treatment for back pain, was clinically dehydrated, evidence indicated at most that child missed from one to three feedings, no evidence suggested he had not been properly cared for prior to incident, and incident occurred while mother was suffering from severe back pains. D.C. Code 1981, § 16-2301(9)(B). In re A.S., 643 A.2d 345, 1994 D.C. App. LEXIS 92 (1994).

Trial court's finding that children were in "imminent danger," and thus were "neglected" was supported by evidence that the father of the children had abused a stepchild for a period of more than a year, and that father was drunk when he abused the stepchildren, even though father never abused his children. D.C. Code 1981, § 16-2301(9)(E). In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

Finding that child was neglected child as result of abuse was sufficiently supported by evidence that mother had beaten child with belt notwithstanding her knowledge of child's severe psychological problems when child had

denied setting fire to her bed. D.C. Code 1981, § 16-2301(9)(A). In re S.K., 564 A.2d 1382, 1989 D.C. App. LEXIS 203 (1989).

Trial judge could properly find on basis of direct, and as circumstantial evidence that government met its burden of proof to show that neglect of child was not due to mother's financial inability, for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means; father testified that mother was receiving public assistance, mother admitted that her absences from home resulted when she was looking for an apartment and went to buy food which suggested a present ability to pay a babysitter, and mother conceded she presented no evidence that assistance was inadequate or unavailable to cover babysitting costs had they been necessary. D.C. Code 1981, § 16-2301(9)(B). In re D.C., 561 A.2d 477, 1989 D.C. App. LEXIS 129 (1989).

On basis of record, infant child was shown to be neglected by a preponderance of the evidence. D.C. Code §§ 16-2301, 16-2320. In re K., 429 A.2d 1331, 1981 D.C. App. LEXIS 259 (1981).

Government established by a preponderance of the evidence that minor children were neglected, as result of their exposure to significant, continual drug activity in home, that placed children at risk; evidence included police surveillance of house, arrest of individual leaving home after allegedly purchasing drugs from home, arrest of resident of home, and discovery in home of 5.2 grams of cocaine and assorted drug paraphernalia consistent with distribution of narcotics. In the Matter of A.W. et al, 134 WLR 267 (Super. Ct. 2006).

Government failed to establish by a preponderance of the evidence that minor children were neglected, as result of parents' incapacity; although birth mother and her fiancé were detained for a short period of time, there was no evidence of pattern of arrests or periods of incarceration for either of them, nor was there evidence of any condition affecting minor children that was direct result of parents' incarceration. In the Matter of A.W. et al, 134 WLR 267 (Super. Ct. 2006).

### Termination of parental rights.

In a child protection proceeding, when there still may be value in retaining at least the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, termination of parental rights may be unwarranted if there is no reasonable likelihood of adoption because of the absence of any substantial good to be achieved for the child. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Trial court did not abuse its discretion, in child protection proceedings, in concluding that

termination of mother's parental rights was warranted, despite children's apparent attachment to mother and despite mother's contention that older children's ages and special needs made them unadoptable, where mother was unfit parent and children were found to be attractive, friendly, affectionate, and in good relationships with their respective foster parents. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

In termination of parental rights' proceeding, mother was properly found to be incapable of caring for daughter, where mother had substance abuse problem, twice attempted suicide, ceased regular visitation with daughter, and in light of psychological assessment concluding that mother did not possess physical, mental, or emotional resources necessary to care for daughter. D.C. Code 1981, §§ 16-2301(9)(B, C), 16-2353(b). In re F.N.B., 706 A.2d 28, 1998 D.C. App. LEXIS 23 (1998).

Poverty of parents, in and of itself, is not appropriate ground for determining that child's best interests would be served by termination of parental rights; neglect statute specifically excepts as basis for finding of parental neglect lack of care, control and subsistence for child due to parent's lack of financial means, and parents may not be deprived of right to rear their children on account of parents' poverty. D.C. Code 1981, §§ 16-2301(9)(B), 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Termination of parental rights proceeding can occur either as part of adoption proceeding or as dispositional alternative in neglect proceeding. D.C. Code 1981, § 16-2320(a)(6); Neglect Rule 18(c). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Failure to identify adoptive parents for child does not preclude termination of parental rights in neglect proceeding. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Trial court's express finding that two-year-old child was suitable for adoption at present time in view of age and health characteristics was sufficient to satisfy statutory requirement for termination of parental rights on ground of neglect that termination would promote timely integration of child into stable and permanent home, despite lack of testimony by Department of Human Services officials that termination would enhance prospects for adoptive placement; finding was based on child's age and physical and emotional development. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Evidence in child neglect case, including testimony by psychiatrist that mother was psychotic and would be unable to care for essential physical needs of her child during acute stage of her illness, and further testimony that mother



failed to keep child clean or feed her because of fear of poisoning, was sufficient to support trial court's conclusion that child was neglected. In re A.B., 486 A.2d 1167, 1984 D.C. App. LEXIS 581 (1984).

In proceeding to terminate parental rights, fact that parent's interest in preserving parent-child relationship may be great is not as significant as fact that parent may be unwilling or unable to fulfill child's most basic needs. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

As a prerequisite for either licensed child placement agency, commissioner, or guardian of the person of a minor to exercise power to consent to adoption, parental rights must have been judicially terminated. D.C. Code §§ 3-117(3), 16-301 et seq., 16-2301(20)(D), (22), 32-786. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

#### **Validity.**

Statute defining the term "child" as not including an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses is not unconstitutional either as an arbitrary legislative classification or as a negation of the presumption of innocence. D.C. Code § 16-2301(3)(A). *United States v. Bland*, 472 F.2d 1329, 1972 U.S. App. LEXIS 7659 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 909, 93 S. Ct. 2294, 36 L. Ed. 2d 975, 1973 U.S. LEXIS 2396 (1973).

Definition of "abused" in child neglect statute was not unconstitutionally vague, despite contention that statute failed to establish any criteria by which to determine what type of spanking of child constituted excessive corporal punishment, where frequent beatings of children resulting in permanent physical scars was plainly encompassed by definition; statutory bounds were sufficient for trial judge to determine whether there was neglect and provided requisite flexibility. D.C. Code 1981, § 16-

2301(23). In re J.A., 601 A.2d 69, 1991 D.C. App. LEXIS 349 (1991).

Neglect statute was not unconstitutional on ground of vagueness, where statute required an investigation into the circumstances of the particular case and provided clear guidelines for determining whether a child is neglected. D.C. Code §§ 16-2301, 16-2320. In re K., 429 A.2d 1331, 1981 D.C. App. LEXIS 259 (1981).

Provision of District of Columbia Court Reorganization Act altering scope of Family division jurisdiction by subjecting to adult court jurisdiction a person who is 16 years of age or older and who is charged with certain enumerated violent crimes is constitutional. D.C. Code § 16-2301(3). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

Juvenile Code's definition of a "child in need of supervision" as a child who is habitually disobedient of the reasonable and lawful commands of his parent, guardian or other custodian and is ungovernable, and is in need of care or rehabilitation, is not unconstitutionally vague. D.C. Code § 16-2301(8)(A)(iii), (B). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

Neither the plainly legitimate sweep of the language of the "child in need of supervision" statute nor the facts of the instant case, involving child's repeatedly absconding from home, suggested a substantial infringement upon the constitutionally protected conduct of children so as to merit facial invalidation of the statute. D.C. Code § 16-2301(8). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

No "weighty countervailing policies" existed to justify allowing an attack on the facial validity of the "child in need of supervision" statute by one whose conduct, repeatedly absconding from home, clearly fell within its parameters. D.C. Code § 16-2301(8). *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

## **§ 16-2301.01. References deemed to refer to Family Court of the Superior Court.**

Any reference in this chapter or any other Federal or District of Columbia law, Executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Family Division of the Superior Court of the District of Columbia shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.

(Jan. 8, 2002, 115 Stat. 2101, Pub. L. 107-114, § 2(d)(3).)

## **§ 16-2301.02. Purpose.**

The purpose of this subchapter is to create a juvenile justice system capable

of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement, while protecting the needs of communities and victims alike. In furtherance of this purpose, the following goals have been established for delinquency cases in the Family Court:

(1) To provide due process through which juveniles and all other interested parties are assured fair hearings, during which applicable constitutional and other legal rights are recognized and enforced;

(2) To promote youth development and prevent delinquency through early intervention, diversion, and community-based alternatives;

(3) To preserve and strengthen families whenever possible and to remove a child from the custody of the child's parents, guardian, or other custodian only when it is determined by the appropriate authority to be in the child's best interests or when necessary for the safety and protection of the public;

(4) To hold a child found to be delinquent accountable for his or her actions, taking into consideration the child's age, education, mental and physical condition, background, and all other relevant factors;

(5) To place a premium on the rehabilitation of children with the goal of creating productive citizens and to recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families;

(6) To serve children in their own neighborhood and communities whenever possible;

(7) To hold the government accountable for the provision of reasonable rehabilitative services;

(8) To provide for the safety of the public; and

(9) To achieve the foregoing goals in the least restrictive settings necessary, with a preference at all times for the preservation of the family and the integration of parental, guardian, or custodial accountability and participation in treatment and counseling programs.

(Mar. 17, 2005, D.C. Law 15-261, § 102(b), 52 DCR 1188; Apr. 13, 2005, D.C. Law 15-354, § 104, 52 DCR 2638.)

**Effect of amendments.** — D.C. Law 15-354 renumbered this section from § 16-2301.01 to § 16-2301.02.

**Legislative history of Law 15-261.** — Law 15-261, the "Omnibus Juvenile Justice Act of 2004", was introduced in Council and assigned Bill No. 15-537, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-637 and transmitted to both Houses of Congress for its review. D.C.

Law 15-261 became effective on March 17, 2005.

**Legislative history of Law 15-354.** — Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

## § 16-2302. Transfer of criminal matters to Family Division.

(a) If it appears to a court, during the pendency of a criminal charge and



before the time when jeopardy would attach in the case of an adult, that a minor defendant was a child at the time of an alleged offense, the court shall forthwith transfer the charge against the defendant, together with all papers and documents connected therewith, to the Division. All action taken by the court prior to transfer of the case shall be deemed null and void unless the Division transfers the child for criminal prosecution under section 16-2307.

(b) If at the time of an alleged offense, a minor defendant was a child but this fact is not discovered by the court until after jeopardy has attached, the court shall proceed to verdict. If judgment has not been entered, the court shall determine on the basis of the criteria in section 16-2307(e) whether to enter judgment or to refer the case to the Division for disposition. If judgment has been entered, it shall not be set aside on the ground of the defendant's age unless the court, after hearing, determines that (1) neither the defendant nor his counsel, prior to the entry of judgment, had reason to believe that defendant was under the age of eighteen years, and (2) the defendant would not have been transferred for criminal prosecution if his age had been known and the procedure set forth in section 16-2307 had been followed. If the judgment is set aside, the case shall be referred to the Division for disposition. The disposition and all prior proceedings in any court of any case referred to the Division for disposition pursuant to this section shall be subject to the confidentiality provisions of sections 16-2331 through 16-2336.

(c) The court making a transfer shall order the minor to be taken forthwith to the Division or to a place of detention designated for children by the Division. The Division shall then proceed as provided in this subchapter.

(d) Nothing in this section shall affect the jurisdiction of a court over a person twenty-one years of age or older.

(Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 525, Pub. L. 91-358, title I, § 121(a); Mar. 24, 1998, D.C. Law 12-81, § 10(v), 45 DCR 745.)

**Cross references.** — Child brought before the issuing court or officer pursuant to arrest warrant, transfer to the Family Division of the Superior Court pursuant to this section, see § 23-563.

Juvenile curfew authority, enforcement and penalties, see § 2-1543.

**Prior Codifications.** — 1981 Ed., § 16-2302.

1973 Ed., § 16-2302.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Bail.  
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### Bail.

Provisions of Juvenile Court Act directing dispositions of juveniles coming under jurisdiction of juvenile court are adequate substitute for bail. D.C. Code §§ 11-1523, 11-1524, 11-

1525, 16-2302, 16-2316. *Fulwood v. Stone*, 394 F.2d 939, 1967 U.S. App. LEXIS 4417 (C.A.D.C. 1967).

### Burden of proof.

On defendant's motion to transfer case from criminal division to family division of superior court, Government had burden of proof of jurisdictional fact that defendant, charged with burglary, had attained age of 16 on date of alleged burglary. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). *Choco v. United States*, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

### Corporation counsel.

The District of Columbia, for protection and best interests of the municipality and of the public, has an inherent role in proceedings of juvenile court; the office of corporation counsel, as duly constituted attorney and chief law officer of the district, is empowered to institute suit on behalf of municipality including all cases within jurisdiction of juvenile court. D.C. Code 1961, § 16-2302. In *re Rice*, 217 A.2d 596, 1966 D.C. App. LEXIS 149 (App. 1966), reversed by 385 F.2d 976, 128 U.S. App. D.C. 194, 1967 U.S. App. LEXIS 5046 (1967).

Where petition charging minor with rape was filed with approval of assistant corporation counsel, the case was prepared by him for trial, witnesses were summoned by him, and where, upon notice from court he appeared ready for hearing, trial judge had impliedly requested assistance of assistant corporation counsel who was entitled to continue participation in the case, and to deny him that was violative of proper judicial procedure. D.C. Code 1961, §§ 11-1583, 16-2302. In *re Rice*, 217 A.2d 596, 1966 D.C. App. LEXIS 149 (App. 1966), reversed by 385 F.2d 976, 128 U.S. App. D.C. 194, 1967 U.S. App. LEXIS 5046 (1967).

The District of Columbia is a party to a juvenile proceeding and may appeal where it is offended by a ruling of the court. D.C. Code 1961, § 16-2302. In *re Rice*, 217 A.2d 596, 1966 D.C. App. LEXIS 149 (App. 1966), reversed by 385 F.2d 976, 128 U.S. App. D.C. 194, 1967 U.S. App. LEXIS 5046 (1967).

For trial judge of juvenile court to call a private conference in chambers after it had been continued to another date, without the knowledge or participation of the legal counsel for District of Columbia for conceded purpose of exploring on judge's own the question of whether there was reasonable ground to believe that minor was involved in sexual assault alleged in petition and then sua sponte dismiss the petition, was in derogation of the right of assistant corporation counsel to fully represent and protect the interests of the municipality and of the public and constituted prejudicial error. D.C. Code 1961, § 16-2302. In *re Rice*,

217 A.2d 596, 1966 D.C. App. LEXIS 149 (App. 1966), reversed by 385 F.2d 976, 128 U.S. App. D.C. 194, 1967 U.S. App. LEXIS 5046 (1967).

### Disposition of child.

Under provisions of Juvenile Court Act that when a child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, when removal from family is deemed necessary juvenile is not automatically to be committed to the receiving home; the juvenile court has duty to fashion appropriate disposition notwithstanding any failure by juvenile's representatives to make specific proposals. D.C. Code §§ 11-1523, 11-1524, 11-1525, 16-2302, 16-2306, 16-2316. *Fulwood v. Stone*, 394 F.2d 939, 1967 U.S. App. LEXIS 4417 (C.A.D.C. 1967).

### Evidence.

Evidence on pretrial motion to transfer case from criminal division to family division that defendant was between 17 and 20 years of age, or in excess of 18 years of age in May or June, 1977, tended to prove only that she attained 18 years of age sometime before May or June, 1977, not that she attained that age by April 17, 1977, and finding that she had attained age of 16 on April 17, 1975, date of alleged burglary, was without support in the record and thus Government did not meet its burden of proving she was not a juvenile. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). *Choco v. United States*, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

### Jurisdiction of criminal division, generally.

Although juvenile was acquitted of charge of assault with intent to commit murder which authorized transfer to Criminal Division of Superior Court to be prosecuted as adult, Criminal Division did not thereby lose jurisdiction, but instead retained jurisdiction until final disposition of lesser-included and related offenses which ended in deadlock and mistrial; just as mistrial resulting from hung jury would not terminate jeopardy, neither did it terminate pendency of "charge" within meaning of transfer statute. D.C. Code 1981, § 16-2301(3)(A). *Partlow v. United States*, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Pendency of assault charges against juvenile when charges of possession with intent to distribute heroin were filed immutably committed possession charges to jurisdiction of Criminal Division, and subsequent dismissal of assault charges did not retroactively deprive Criminal Division of jurisdiction over possession charges. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h).



Montgomery v. United States, 521 A.2d 1150, 1987 D.C. App. LEXIS 534 (1987).

#### **Notice and opportunity to defend.**

Where juvenile judge stated several different grounds upon which juvenile court jurisdiction could exist but petition invoking court's jurisdiction stated only one ground, if upon remand juvenile court finds jurisdiction on grounds other than one alleged in petition, question of fair notice and opportunity to defend would be presented. D.C. Code § 16-2302. In re Elmore, 382 F.2d 125, 1967 U.S. App. LEXIS 6278 (C.A.D.C. 1967).

#### **Petitions.**

Youth division officer, who has not participated in arrest of juvenile, has gathered "personal knowledge" of circumstances which make up the "case" concerning the juvenile while performing his functions and he may verify petition to bring juvenile within jurisdiction of juvenile court. D.C. Code §§ 16-2302, 16-2306(a). In re Taylor, 268 A.2d 522, 1970 D.C. App. LEXIS 254 (App. 1970).

Petition, which briefly alleged facts which brought juvenile within jurisdiction of the juvenile court, including place, time and date of alleged unlawful conduct, nature of violation, names of alleged co-perpetrators of the assault and name of the victim, and name of intake officer who investigated the case, was adequate to apprise juvenile of nature and substance of proceeding against him and the juvenile was not prejudiced by slight disparity between the allegations that he had assaulted victim with dangerous weapon and robbed victim and proof which established that he had assaulted another who was with the victim. D.C. Code §§ 11-1551 (a)(1)(A, C, E), 16-2302. In re Coward, 254 A.2d 730, 1969 D.C. App. LEXIS 266 (App. 1969), remanded by 429 F.2d 214, 139 U.S. App. D.C. 30, 1970 U.S. App. LEXIS 8461 (1970).

Judge of juvenile court misconceived functions and authority of intake officer when he took position that intake officer was proper person to consent to dismissal of petition charging a minor with rape rather than the assistant corporation counsel who had appeared on behalf of the District of Columbia and participated in proceedings up to that point since intake officer is but an investigative officer of the juvenile court not empowered by statute to act as legal representative of the District of Columbia or to conduct presentation of evidence and examination of witnesses. D.C. Code 1961, § 16-2302. In re Rice, 217 A.2d 596, 1966 D.C. App. LEXIS 149 (App. 1966), reversed by 385 F.2d 976, 128 U.S. App. D.C. 194, 1967 U.S. App. LEXIS 5046 (1967).

#### **Place of detention.**

Statute which prohibits commitment of child found to be juvenile delinquent to penal or

correctional institution for adult offenders does not preclude a commitment to juvenile facility of person previously held in adult facility who was found to be "child" for purpose of juvenile delinquency proceedings. D.C. Code 1981, §§ 16-2301, 16-2302(c), 16-2313(d, e), 16-2320(e); Criminal Rule 52. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

#### **Review.**

Denial of motion to transfer prosecution of juvenile as adult back to Family Court is appealable as final order. Partlow v. United States, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Defendant did not waive his right to appeal determination of government to charge him as an adult, even though he pleaded guilty to an adult charge, where he informed trial court of his concerns about propriety of the charge before jeopardy attached, judgment was not entered, there was no attempt to deceive, and he pled after he had been assured by prosecutor and defense counsel that any challenge based on his status as a child could be raised at a later date. D.C. Code 1981, §§ 16-2301(3)(A), 16-2302, 22-501, 22-3202. Logan v. United States, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

#### **Right to juvenile proceedings.**

A defendant's asserted right to disposition of charge in juvenile proceedings is forever lost if not resolved in his or her favor before jeopardy has attached. D.C. Code §§ 16-2301(3), 16-2302, 16-2302(b), 16-2307, 22-1801(a, b), 23-1327. Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

#### **Transfers and dismissals, generally.**

At time of juvenile's violation of narcotics laws in 1969, District of Columbia statute relating to transfer of case to juvenile court from other courts required that United States District Court for the District of Columbia transfer case to juvenile court of the District of Columbia. D.C. Code § 11-1552. United States v. Williams, 351 F. Supp. 223, 1972 U.S. Dist. LEXIS 11423 (1972).

In proceeding on motion to dismiss indictment and to have court proceed in the same manner that juvenile court would have proceeded had it retained jurisdiction of 17-year-old defendant, against whom four complaints had been filed in juvenile court charging him with three assaults with intent to commit robbery and one robbery, records of juvenile court established a full investigation had been conducted prior to waiver of jurisdiction by juvenile court. D.C. Code 1951, § 11-914. U.S. v. Anonymous, 176 F.Supp. 325, 1959 U.S. Dist. LEXIS 2789 (D.D.C.1959).

Where 17-year-old defendant against whom four complaints had been filed in juvenile court

charging him with three assaults with intent to commit robbery and one robbery, had used no weapon and there was no violence connected with the crimes, all of which occurred in a relatively short period of time, and there was nothing in defendant's background to indicate any proclivity towards antisocial behavior and he had no past criminal or juvenile record, indictment against defendant would be dismissed, the record expunged and district court would proceed in accordance with juvenile court procedural rules. D.C. Code 1951, § 11-914. *U.S. v. Anonymous*, 176 F.Supp. 325, 1959 U.S. Dist. LEXIS 2789 (D.D.C.1959).

Transfer of case to family division by reason of Government's failure to bear its burden of proof that defendant had attained age of 16 on date of alleged burglary did not preclude retransfer of her case for criminal prosecution where Government's failure of proof did not foreclose proof that she was at least 15 years of age on that date or that she was at least 18 years of age on date of request for transfer for criminal prosecution. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). *Choco v. United States*, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

## § 16-2303. Retention of jurisdiction.

For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time. This section does not affect the jurisdiction of other divisions of the Superior Court or of other courts over offenses committed by a person after he ceases to be a child. If a minor already under the jurisdiction of the Division is convicted in the Criminal Division or another court of a crime committed after he ceases to be a child, the Family Division may, in appropriate cases, terminate its jurisdiction.

(Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 525, Pub. L. 91-358, title I, § 121(a).)

**Prior Codifications.** — 1981 Ed., § 16-2303.

1973 Ed., § 16-2303.

**Editor's notes.** — Appropriations approved: Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997,

provided that funds appropriated for expenses under this section for the fiscal year ending September 30, 1997, shall be available for obligations incurred under the Act in each fiscal year since inception in the fiscal year 1985.

## CASE NOTES

### ANALYSIS

Continuing jurisdiction.  
Jurisdiction, generally.  
Review.  
Subsequent delinquent acts.  
Termination of jurisdiction.

### Continuing jurisdiction.

Exception to requirements of Interstate Compact on the Placement of Children (ICPC) for child's placement pursuant to private arrangement was inapplicable to placement of child in custody of Child and Family Services Agency and subject to continuing jurisdiction of superior court. In re T.M.J., 878 A.2d 1200, 2005 D.C. App. LEXIS 381 (2005).

Trial court has authority to act sua sponte to extend commitment order for neglected child when Government fails to file motion to extend. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court retained its subject matter jurisdiction over neglected child after date when commitment order was no longer in effect, where court did not dismiss neglect petition before government filed motion to extend commitment, but instead court subsequently extended commitment nunc pro tunc. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Natural parents' objection to continuing neglected child's commitment did not deprive trial court of jurisdiction to extend expired commitment order, whether upon motion by government or sua sponte. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

When parent objects to continuance of neglected child's custody after commitment order has expired, court must, whether acting on motion by government or sua sponte, permit parent's objection to be fully aired at hearing



and weighed as part of court's ruling on whether extending status quo is necessary to safeguard child's welfare. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Corporation counsel, representing the custodial institution and the "public interest," may move to extend the period of commitment of a juvenile when the extension is necessary for his or her rehabilitation, or the protection of the public interest. D.C. Code §§ 16-2303, 16-2305(f), 16-2322(b). In re J., 413 A.2d 154, 1980 D.C. App. LEXIS 269 (1980).

Although statute allows court to retain continuing jurisdiction over juvenile until he reaches age of majority, such statute would not be interpreted to grant court authority to revoke aftercare status of juvenile offender whose legal custody had been transferred to social rehabilitation administration. D.C. Code § 16-2303. In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

#### **Jurisdiction, generally.**

Trial court's general powers to adjudicate matters involving children may not be used as a vehicle to bypass the operation of comprehensive and extensive statutory procedures governing abused and neglected children; legislature has preempted the power of the court to exercise its inherent authority to override the procedures established for determining the future of abused and neglected children. W.D. v. C.S.M., 906 A.2d 317, 2006 D.C. App. LEXIS 499 (2006).

Court by its own words cannot create or extinguish its own subject matter jurisdiction. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

"Subject matter jurisdiction" concerns court's authority to adjudicate the type of controversy presented by case under consideration. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

#### **Review.**

Appropriate disposition of defendant's appeal of two delinquency adjudications, one for simple assault and one for assault with intent to commit robbery, after Court of Appeals found that simple assault merged into assault to commit robbery, was simply to affirm unvacated portion of judgment, where defendant, tried as a juvenile, had not received separate sentence for each offense but rather a single judgment of delinquency, where period of time for which defendant had been committed to Department of Human Services had expired, and where defendant at time of appeal was 21-years old and thus no longer subject to jurisdiction of juvenile court. D.C. Code 1981, §§ 16-2303, 16-2320(c), 22-501, 22-504; Juve-

nile Rule 32(b). In re T.H.B., 670 A.2d 895, 1996 D.C. App. LEXIS 6 (1996).

Court of Appeals would review order terminating commitment of neglected child to Department of Human Services (DHS) even though, at time of appeal, child had reached 21st birthday and services of juvenile court system were therefore unavailable to him; exception to mootness doctrine applied based on likelihood that other young people in juvenile neglect system deemed unable to make effective use of services faced same prospect of early termination of commitment at critical time when obligation of government for their continued care could not be fully litigated before they became age ineligible. D.C. Code 1981, § 16-2303. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

Although juvenile, who had been adjudicated delinquent, was over 18 years old at time of appeal and was no longer committed to custody of the Department of Human Services, appeal of superior court order requiring specific placement for the juvenile in a private school and requiring the Department to pay expenses of that placement had not been rendered moot since, were the Court of Appeals to assume that a juvenile case could be mooted when the child attains age of majority and leaves custody of the agency, issue presented would be capable of repetition, yet evading review. In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

#### **Subsequent delinquent acts.**

"Subsequent delinquent act," within meaning of code section providing that transfer of child for criminal prosecution terminates jurisdiction of Family Division over child with respect to any subsequent delinquent act, refers to act which occurs after adult criminal charges have been filed; relevant date for determining whether Family Division has jurisdiction is date on which juvenile was charged with adult offense, and not date on which offense occurred. D.C. Code 1981, § 16-2307(h). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Once an individual who is 16 years of age or older has been charged by United States attorney with a crime pursuant to statute which deems an individual not to be a child when certain serious offenses are charged that individual is deemed transferred for criminal prosecution within meaning of authorizing statute, and the Family Division's jurisdiction is thereby terminated, subject to restoration as prescribed, over a subsequent delinquent act for which there is a criminal statute equally applicable to adults. D.C. Code §§ 16-2301(3), (3)(A), 16-2303, 16-2307, 16-2307(a, h). In re C.S., 384 A.2d 407, 1977 D.C. App. LEXIS 247 (1977).

#### **Termination of jurisdiction.**

Trial court's jurisdiction over neglected child does not lapse with expiration of commitment

order. D.C. Code 1981, § 16-2322. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's jurisdiction over neglected child did not end merely because trial court declared that its authority would end on certain date, especially where trial court noted that such words were not intended to be statement of law, but were merely expression of exasperation aimed at dislodging administrative inertia.

D.C. Code 1981, § 16-2322. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's subject matter jurisdiction over neglected child did not lapse when Government failed to file motion to extend child's commitment and court acted sua sponte to extend commitment order. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

## § 16-2304. Right to counsel; party status.

(a) A child alleged to be delinquent or in need of supervision is entitled to be represented by counsel at all critical stages of Division proceedings, including the time of admission or denial of allegations in the petition and all subsequent stages. If the child and his parent, guardian, or custodian are financially unable to obtain adequate representation, the child shall be entitled to have counsel appointed for him in accordance with rules established by the Superior Court. In its discretion, the Division may appoint counsel for the child over the objection of the child, his parent, guardian, or other custodian.

(b)(1) When a child is alleged to be neglected or when the termination of the parent and child relationship is under consideration, the parent, guardian, or custodian of the child named in the petition or in a motion to terminate is entitled to be represented by counsel at all critical stages of the proceedings, and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with rules established by the Superior Court of the District of Columbia.

(2) Every report required to be submitted to the Division by this chapter, or otherwise submitted to the Division in any proceeding, shall be served on all counsel and unrepresented parties by mail or by facsimile at the same time it is submitted to the Division.

(3) The Division shall maintain a register of those attorneys who have expressed an interest in being appointed to represent parties or to serve as guardians ad litem in neglect proceedings, and shall attempt insofar as possible to make appointments from the register.

(4)(A) The following individuals, if there are any for the child, and their attorneys, shall be provided notice of, and an opportunity to be heard in, the neglect or termination proceedings:

- (i) The child's current foster parent;
- (ii) The child's current preadoptive parent;
- (iii) The child's current legal guardian or kinship caregiver;
- (iv) The child's therapist; and

(v) A relative or other individual with whom the child is currently placed pursuant to § 16-2320(a)(3)(C).

(B) In addition to the requirements of subparagraph (A) of this paragraph, if the child has been living with a person other than the parent, the person shall receive notice of the neglect or termination proceedings and, if the child has been with them for 12 months or more, the person may, upon his or her request, be designated a party to the proceedings. If the child has been



living with the person less than 12 months, upon the person's request, the judge may, at his or her discretion, designate the person a party to the proceedings which pertain to the determination of neglected child as defined in § 16-2301(9). If the parent or other person party to the proceedings is financially unable to obtain adequate representation, counsel shall be appointed according to rules established by the Superior Court of the District of Columbia.

(5) The Superior Court shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship pursuant to subchapter III of this chapter, appoint a guardian ad litem who is an attorney to represent the child in the proceedings. The guardian ad litem shall in general be charged with the representation of the child's best interest.

(c) Prior to appointment of counsel under this section, the eligibility of a child or other party to be represented by counsel shall be determined by the Division pursuant to rules established by the Superior Court of the District of Columbia.

(d) There are authorized to be appropriated such funds as may be necessary for the administration of this section.

(Dec. 23, 1963, 77 Stat. 587, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 526, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 402, 24 DCR 3341; June 4, 1982, D.C. Law 4-114, § 2, 29 DCR 1699; Mar. 13, 1985, D.C. Law 5-129, § 2(b), 31 DCR 5192; June 27, 2000, D.C. Law 13-136, § 301(b), 47 DCR 2850.)

**Cross references.** — Public defender service, eligibility for services, see § 2-1602.

Representation in criminal cases, indigents, see § 11-2601 et seq.

**Prior Codifications.** — 1981 Ed., § 16-2304.

1973 Ed., § 16-2304.

**Effect of amendments.** — D.C. Law 13-136 rewrote subsecs. (b)(2) through (d), inclusive, which previously read:

"(b)(2) The Division shall maintain a register of those attorneys who have expressed an interest in being appointed to represent parties or to serve as guardians ad litem in neglect proceedings, and shall attempt insofar as possible to make appointments from the register.

"(3) If the child has been living with a person other than the parent, the person shall receive notice of the neglect or the termination proceedings and, if the child has been with them for twelve (12) months or more, the person may, upon his or her request, be designated a party to the proceedings. If the child has been living with the person less than twelve (12) months, upon the person's request the judge may, at his or her discretion, designate the person a party to the proceedings proceedings which pertain to the determination of neglect as defined in D.C. Code, section 16-2301. If the parent or other

person party to the proceedings is financially unable to obtain adequate representation, counsel shall be appointed according to rules established by the Superior Court of the District of Columbia. The Superior Court shall in every case involving a neglected child which results in a judicial proceeding, including the termination of the parent and child relationship pursuant to subchapter III of this chapter, appoint a guardian ad litem who is an attorney to represent the child in the proceedings. The guardian ad litem shall in general be charged with the representation of the child's best interest.

"(c) Prior to appointment of counsel under this section, the eligibility of a child or other party to be represented by counsel shall be determined by the Division pursuant to rules established by the Superior Court of the District of Columbia.

"(d) There are authorized to be appropriated such funds as may be necessary for the administration of this section."

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(b) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 301(b) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(b) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(b) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 4-114.** — Law 4-114, the "Assistance to Neglected Children Funding Authorization Act of 1982," was introduced in Council and assigned Bill No. 4-411, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-177 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-129.** — For legislative history of D.C. Law 5-129, see Historical and Statutory Notes following § 16-2326.1.

**Legislative history of Law 13-136.** — For Law 13-136, see notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Appellate jurisdiction.  
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### Appellate jurisdiction.

Appeal from order denying motion for appointment of counsel to represent indigent husband on motion for civil protection order was not mooted by expiration of the order where husband's motion to expedite his appeal had been denied and, because of one-year duration of the order, future orders might continue to evade review. *Cloutterbuck v. Cloutterbuck*, 556 A.2d 1082, 1989 D.C. App. LEXIS 55 (1989).

### Civil protection orders.

Indigent husband was not entitled to be represented by counsel on motion for civil protection order despite contention that, if he disobeyed the order, husband might be imprisoned for contempt. *Cloutterbuck v. Cloutterbuck*, 556 A.2d 1082, 1989 D.C. App. LEXIS 55 (1989).

### Consolidated proceedings.

Proceeding for termination of parental rights and adoption proceeding would be consolidated, over objection of foster mother who had filed adoption petition that competed with similar petition filed by maternal grandparents, where foster mother had intervened in termination

proceeding and thus had shown her willingness to confront natural mother, and only foster mother, and not guardian ad litem representing child, had appealed denial of termination of parental rights, and thus there was no evidence of any interest of child that would indicate that termination proceeding should continue separately. In re *Baby Girl D.S.*, 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### Delinquency proceedings.

Juvenile contesting transfer of delinquency case for adult prosecution is entitled to hearing, including right to counsel, access by counsel to juvenile's social and other relevant records, and statement of reasons for juvenile court's decision sufficient to permit meaningful scrutiny by reviewing court. D.C. Code 1981, § 16-2304(a). In re *W.T.L.*, 656 A.2d 1123, 1995 D.C. App. LEXIS 52 (1995).

In view of precautionary measures required before filing of delinquency petition, including inquiry by corporation counsel as to facts and law, fact that no probable cause hearing is required when juvenile is not ordered detained does not violate standard of fundamental fairness. D.C. Code §§ 16-2304(a), 16-2305(a-d), 16-2308, 16-2310, 16-2312(e, f). *M.A.P. v. Ryan*, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re *K.E.W.*, 123 WLR 1769 (Super. Ct. 1995).

### Federal jurisdiction.

Younger abstention doctrine did not bar federal district courts' consideration of constitutional challenges to system by which District of



Columbia superior court appoints counsel to represent indigent parents in neglect proceedings without reimbursement as, except for one individual plaintiff, the federal plaintiffs were not parties to any pending suit in local courts in which their constitutional challenges could be resolved, individual neglect cases in which plaintiffs were counsel were questionable vehicles at best for raising their constitutional claims, and there was no foreseeable need for any monitoring of day-to-day district court operations. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const. Amends. 5, 13. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

#### **Foster parents.**

Trial court was authorized to grant "party status" to foster mother, with whom neglected children had been living for more than 12 months, for purposes of mother's motion for reunification. D.C. Code 1981, § 16-2304(b)(3). In re Phy. W., 722 A.2d 1263, 1998 D.C. App. LEXIS 242 (1998).

#### **Guardians ad litem.**

Permitting court-appointed guardian ad litem to file motion to terminate parental rights following adjudication of neglect does not violate due process; once child has been adjudicated neglected, right of family privacy and integrity has already been subordinated to that extent to District's right and duty to protect mother and children through judicial determinations of their interest and, at that point, no valid right to family integrity is breached merely by allowing guardian ad litem, who may be uniquely familiar with facts of case and parties, to initiate and pursue termination. D.C. Code 1981, § 16-2354(a); U.S.C. Const. Amends. 5, 14. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

Guardian ad litem (GAL) for child in neglect proceeding lacks authority to file neglect petitions or to maintain such proceedings independently of corporation counsel. D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

New counsel should have been appointed to represent child in adoption proceeding, where guardian ad litem, who had been appointed as advocate for child, was called as witness for one of the opposing parties. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof. Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Error arising when trial judge allowed child's guardian ad litem to serve dual roles as attor-

ney and witness at show cause hearing on adoption petition did not result in miscarriage of justice, where judge did not uncritically adopt lay opinions of guardian ad litem, but instead independently evaluated evidence, weighed options for child, and reached his own conclusion that adoption was in child's best interest. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof. Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Council's action in approving the increase in compensation level to \$1,000 for termination of parental rights proceedings was a ratification of the role that guardians ad litem perform in termination of parental rights proceedings. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

#### **Hearing.**

Biological father was entitled to an evidentiary hearing on his claim that appointed counsel rendered ineffective assistance in a proceeding on adoption of his daughter, and Court of Appeals would remand the record, but not the case, for determination of that issue; father's complaints about counsel's performance included counsel's untimely request for a continuance and purported failure to protect father's right to participate meaningfully in the show-cause hearing, many of those claims were supported by the trial record, and other claims were based on affidavits that proffered in some detail what father and other witnesses would have said if they had been called to testify. In re R.E.S., 978 A.2d 182, 2009 D.C. App. LEXIS 351 (2009).

When parent objects to continuance of neglected child's custody after commitment order has expired, court must, whether acting on motion by government or sua sponte, permit parent's objection to be fully aired at hearing and weighed as part of court's ruling on whether extending status quo is necessary to safeguard child's welfare. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

#### **Knowing and voluntary waiver.**

Hearing was required to determine whether mother who signed form relinquishing her parental rights was aware of her attorney's availability and knowingly and voluntarily waived right to use him. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

#### **Neglect proceedings.**

Where father opposing neglect petition was still only a suspect in a criminal investigation of disappearance of, and suspected murder of, children's mother, the Sixth Amendment right to counsel did not come into play. In re Ti B., 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000),

remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother arbitrarily infringed on father's common law and First Amendment right to consult freely with his lawyer, where there was no suggestion of conflict of interest or other impropriety. *In re Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother deprived father of ability to obtain informed legal advice on his Fifth Amendment privilege in neglect proceeding, where there was no showing of any risk of identifiable harm. *In re Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Neglect proceeding was not criminal in nature, and thus, mother had no Sixth Amendment right to effective assistance of counsel, although she had a statutory right to counsel. U.S. Const. Amend. 6; D.C. Code 1981, § 16-2304(b)(1). *In re AK V.*, 747 A.2d 570, 2000 D.C. App. LEXIS 66 (2000).

Trial court could properly appoint counsel for father after petition had been filed which charged mother and stepfather with neglect, rather than forcing father to defend his rights pro se. D.C. Code 1981, § 16-2304(b)(1); Neglect Rule 20(a). *In re S.G.*, 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

### Notice of proceedings.

Natural father's claimed denial of due process in commitment proceedings for neglected child was premature, where trial court had not yet made factual finding as to whether father had received actual notice of proceeding by virtue of his ongoing relationship with mother. U.S.C. Const. Amends. 5, 14. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

### Pro bono appointments.

Material fact issue existed as to rationality of District of Columbia superior court system of restricting pro bono appointments to represent indigent parents in neglect proceedings to those attorneys on public defender service list for

compensated Criminal Justice Act appointments in juvenile cases, precluding summary judgment on equal protection challenge. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const. Amend. 5. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

Where individual practitioner in Family Division of Superior Court of District of Columbia unsuccessfully pressed in superior court proceedings his constitutional challenge to District's procedure for appointing pro bono counsel to represent indigent parents in neglect proceedings, res judicata barred subsequent federal court claim for damages on grounds that prior appointments abridged his constitutional rights and also precluded litigation of claims about future appointments as superior court actually entertained and rejected such claims. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const. Amends. 5, 13. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

District of Columbia procedure whereby family division attorneys seeking Criminal Justice Act compensated juvenile cases must accept pro bono representation of indigent parents in child neglect proceedings with little or no compensation does not constitute involuntary servitude as an attorney who wishes to take no further assignments is free to either stop practicing before that division or even to continue practice without taking CJA cases. D.C. Code 1981, §§ 11-2601, 11-2602, 11-2604, 11-2605, 16-2304; D.C. Neglect Rule 20(b); 18 U.S.C. § 3006A(d)(1, 2); U.S.C. Const. Amend. 13. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

Fact that after commencement of action challenging constitutionality of District of Columbia system for pro bono appointments of counsel for indigent parents in child neglect proceedings without reimbursement of any kind a system of limited reimbursement was instituted did not moot the constitutional challenge as severely inadequate pay, like no pay, can cause hardships which give rise to valid constitutional claims. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const. Amends. 5, 13. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

There was no per se unconstitutional taking of property without just compensation in requirement that practitioners in Family Division of District of Columbia Superior Court undertake pro bono representation of indigent parents in child neglect proceedings, but an unreasonable amount of required uncompensated



sated service might constitute a "taking." D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const.Amend. 5. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

Right of practitioners before Family Division of Superior Court of District of Columbia was not so fundamental that it triggered strict judicial scrutiny on equal protection challenge to District's scheme for pro bono assignment of counsel to represent indigent parents in neglect proceedings; rather, if the system reflected rational choice aimed at further limited state interests, it was to be upheld. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const.Amend. 5. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

Although practitioners before Family Division of Superior Court of District of Columbia had no expectation of compensation for their services in pro bono child neglect cases that rose to level of a property interest, if the appointment system effectively denied practitioners the opportunity to maintain remunerative practice as family lawyers before the Family Division and that specialty practice was determined to be a property interest, it might affect an unconstitutional taking. D.C. Neglect Rule 20(b); D.C. Code 1981, § 16-2304; U.S. Const.Amend. 5. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695, 1984 U.S. App. LEXIS 26664 (C.A.D.C. 1984).

Even if order appointing counsel without compensation was invalid, where the court had jurisdiction of the subject matter of appointing counsel, counsel lawfully could be adjudged

guilty of criminal contempt for failure to comply with the order; counsel had obligation either to comply or to seek to have the order vacated. D.C. Code 1978 Supp. § 16-2304(b)(1); Neglect Rule 20. In re Marshall, 445 A.2d 5, 1982 D.C. App. LEXIS 324 (1982), writ of certiorari denied by 459 U.S. 875, 103 S. Ct. 166, 74 L. Ed. 2d 137, 1982 U.S. LEXIS 3690, 51 U.S.L.W. 3258 (1982).

#### **Relinquishment of parental rights.**

In assessing appointed counsel's performance in a proceeding involving termination of parental rights in the context of a parent's claim of ineffective assistance, it will be instructive to consult the Standards of Practice for CCAN Appointments developed by the Superior Court; those basic duties, however, neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance, and in any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. In re R.E.S., 978 A.2d 182, 2009 D.C. App. LEXIS 351 (2009).

Mother who was under court supervision in neglect proceeding had right to be represented by counsel when she executed form relinquishing her parental rights. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Any attempt to surrender parental rights through voluntary relinquishment while mother remains under court's neglect jurisdiction must be regarded as a "critical stage" under statute affording parent right to counsel in neglect proceeding. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

### **§ 16-2305. Petition; contents; amendment.**

(a) Complaints alleging delinquency or need of supervision shall be referred to the Director of Social Services, and complaints alleging neglect shall be referred to the Director of the Child and Family Services Agency, each of whom shall conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed. If judicial action appears warranted, under intake criteria established by rule of the Superior Court of the District of Columbia, the Director of Social Services, or the Director of the Agency shall recommend that a petition be filed. If the Director of Social Services, in the case of a complaint alleging delinquency or need of supervision, decides not to recommend the filing of a petition, the complainant shall have a right to have that decision reviewed by the Corporation Counsel. The Director of Social Services, in the case of a complaint alleging delinquency or need of supervision, shall notify the complainant of such right of review. Complaints alleging neglect submitted by the Agency shall be referred directly to the Corporation Counsel of the District of Columbia.

(b) Petitions initiating judicial action may be signed by any person who has knowledge of the facts alleged or, being informed of them, believes they are true, except that petitions alleging need of supervision may only be signed by the Director of Social Services, a representative of a public agency or a nongovernmental agency licensed and authorized to care for children, a representative of a public or private agency providing social service for families, a school official, or a law enforcement officer. Petitions shall be verified and verification may be upon information or belief.

(c)(1) Each petition shall be prepared by the Corporation Counsel after an inquiry into the facts and a determination of the legal basis for the petition. If the Director of Social Services has refused to recommend the filing of a delinquency petition, or if the Director of the Agency has refused to recommend the filing of a neglect petition, the Corporation Counsel, on request of the complainant, shall review the facts presented and shall prepare and file a petition if he believes such action is necessary to protect the community or the interests of the child. Any decision of the Corporation Counsel on whether to file a petition shall be final.

(2) Where the delinquency petition filed by the Corporation Counsel is the 3rd petition filed against a child and the child is 13 years old or younger, the Child and Family Services Agency shall institute a child neglect investigation against the parent, guardian, or custodian of the child.

(d) A petition shall be filed by the Corporation Counsel within seven days (excluding Sundays and legal holidays) after the complaint has been referred to the Director of Social Services, except as otherwise provided in section 16-2312. A petition shall set forth plainly and concisely the facts which give the Division jurisdiction of the child under section 11-1101(13). In delinquency cases the petition shall also state the specific statute or ordinance on which the charge is based. If delinquency or need of supervision is alleged, a statement shall be included in the petition that the child appears to be in need of care or rehabilitation. The petition shall contain such other facts and information as may be required by rules of the Superior Court.

(e) A petition may be amended by leave of the Division on motion of the Corporation Counsel or counsel for the child, at any time prior to the conclusion of the factfinding hearing. The Division shall grant the Corporation Counsel, the child, and his parent, guardian, or custodian notice of the amendment and, where necessary, additional time to prepare.

(f) The District of Columbia shall be a party to all proceedings under this subchapter.

(Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 526, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(b), 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(x), 45 DCR 745; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(2), (3), 48 DCR 2043; Mar. 17, 2005, D.C. Law 15-261, § 1002(a), 52 DCR 1188.)

**Cross references.** — Substantiated reports, referral and social investigation, agency plan, report of investigation, see § 4-1301.09.

**Prior Codifications.** — 1981 Ed., § 16-2305.  
1973 Ed., § 16-2305.



**Effect of amendments.** — D.C. Law 13-277 rewrote subsec. (a) which formerly read:

“(a) Complaints alleging delinquency, need of supervision, or neglect shall be referred to the Director of Social Services who shall conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed. If judicial action appears warranted, under intake criteria established by rule of the Superior Court, the Director shall recommend that a petition be filed. If the Director decides not to recommend the filing of a petition, the complainant in a delinquency or neglect case shall have a right to have that decision reviewed by the Corporation Counsel, and the Director shall notify the complainant of such right of review. Complaints alleging neglect submitted by the Child Protective Services Division of the Department of Human Services shall be referred directly to the Corporation Counsel of the District of Columbia.”

and in subsec. (c) substituted “If the Director

of Social Services has refused to recommend the filing of a delinquency petition, or if the Director of the Agency has refused to recommend the filing of a neglect petition” for “If the Director of Social Services has refused to recommend the filing of a delinquency or neglect petition” in the second sentence.

D.C. Law 15-261, in subsec. (c), designated the existing language as par. (1), and added par. (2).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

## CASE NOTES

### ANALYSIS

#### Amendments.

Authority of corporation counsel.

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#### Amendments.

Permitting government to amend count of petition filed in Juvenile Branch of Family Division to change name of robbery victim was within trial court's discretion and was not prejudicial where defense was alibi. D.C. Code § 16-2316; D.C. Code SCR, Juvenile Rule 7(e). In re W.K., 323 A.2d 442, 1974 D.C. App. LEXIS 251 (1974).

Change in name of victim in petition filed in Juvenile Division of Family Court is not tantamount to charging a new offense. D.C. Code § 16-2316; D.C. Code SCR, Juvenile Rule 7(e). In re W.K., 323 A.2d 442, 1974 D.C. App. LEXIS 251 (1974).

Superior court had discretion to permit amendment of juvenile delinquency petition, which alleged violation of federal law, so as to allege violation of District law. D.C. Code SCR, Juvenile Rule 7(e); D.C. Code SCR, Criminal Rule 7(e); D.C. Code §§ 11-721(a)(1), 16-2301(7), 16-2305(e), 22-2202, 22-2205. In re G.,

305 A.2d 529, 1973 D.C. App. LEXIS 303 (1973).

Government in juvenile delinquency proceeding may move to amend petition at any time before conclusion of fact-finding hearing. D.C. Code § 16-2305(e); D.C. Code SCR, Juvenile Rule 7(e); D.C. Code SCR, Criminal Rule 7(e). In re G., 305 A.2d 529, 1973 D.C. App. LEXIS 303 (1973).

#### Authority of corporation counsel.

Corporation counsel has exclusive authority to file neglect petition, and District of Columbia must be party to neglect proceeding. D.C. Code 1981, § 16-2305(c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Corporation counsel, representing the custodial institution and the “public interest,” may move to extend the period of commitment of a juvenile when the extension is necessary for his or her rehabilitation, or the protection of the public interest. D.C. Code §§ 16-2303, 16-2305(f), 16-2322(b). In re J., 413 A.2d 154, 1980 D.C. App. LEXIS 269 (1980).

The authority to “prosecute” neglect cases is placed squarely upon the Office of the Corporation Counsel representing the District of Columbia Government. That Office's decision concerning whether or not to file a petition is final and unreviewable. In re D.B., 117 WLR 665 (Super. Ct. 1989).

#### Delinquency proceedings, generally.

Delinquency adjudication consists of two steps: first, a fact-finding hearing must be held

to determine whether the allegations of the petition are true, and then, if such determination is made, a dispositional hearing is necessary to decide whether the child is in need of care or rehabilitation and, if so, what disposition should be made. D.C. Code § 16-2305(d). In re M. C. F., 293 A.2d 874, 1972 D.C. App. LEXIS 236 (1972).

If it is shown in delinquency proceeding that the child is not in need of rehabilitation, the juvenile must be discharged. D.C. Code 1981, § 16-2305(d). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

In order for a delinquency finding to stand it must be based on an offense charged in petition or, as in an adult criminal proceeding, on a crime which is a lesser included offense of the one charged. D.C. Code § 16-2305. In re W.B.W., 397 A.2d 143, 1979 D.C. App. LEXIS 282 (1979).

### Dismissal.

When government seeks to dismiss neglect petition pretrial based upon good-faith determination that proof is insufficient, motion must be granted even over objection of guardian ad litem (GAL). D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Trial court, acting within its sound judicial discretion, has the power under Juvenile Court Rule to dismiss for social reasons delinquency petition filed against a juvenile, when such action is in the interests of justice and the welfare of the child; and such dismissal is subject to review only for abuse of discretion; however, upon request of the corporation counsel, the court must set forth its reasons for the dismissal. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

Superior court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles'

welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. D.C. Code SCR, Juvenile Rule 48(b); D.C. Code §§ 16-2314, 16-2316(a), 16-2317(b). In re R., 310 A.2d 226, 1973 D.C. App. LEXIS 369 (1973).

### Guardians ad litem.

Guardian ad litem (GAL) for child in neglect proceeding lacks authority to file neglect petitions or to maintain such proceedings independently of corporation counsel. D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### Hearings.

The filing of verified petition against juvenile by authorized prosecuting authority eliminates the necessity of a preliminary hearing. D.C. Code § 16-2305. M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

In view of precautionary measures required before filing of delinquency petition, including inquiry by corporation counsel as to facts and law, fact that no probable cause hearing is required when juvenile is not ordered detained does not violate standard of fundamental fairness. D.C. Code §§ 16-2304(a), 16-2305(a-d), 16-2308, 16-2310, 16-2312(e, f). M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

### Lesser included offenses.

If defendant was charged only with rape, trial court erred in finding him guilty of separate, uncharged offense of taking indecent liberties with a child; however, if government charged defendant with both rape and carnal knowledge, trial court could have found defendant guilty of taking indecent liberties with a child a lesser included offense of carnal knowledge. D.C. Code 1973, §§ 16-2305(d), 22-2801, 22-3501(a). In re C.D., 437 A.2d 171, 1981 D.C. App. LEXIS 382 (1981).

### Notice.

Juvenile facing adjudication of delinquency must be put on notice of nature of act against which he must defend by charging document. In re D.B.H., 549 A.2d 351, 1988 D.C. App. LEXIS 192 (1988).

Defendant could not be found delinquent on charge of simple assault where delinquency petition gave juvenile notice that he would be required to defend against robbery but not against simple assault, notwithstanding that under certain circumstances simple assault and robbery may encompass similar elements.



In re D.B.H., 549 A.2d 351, 1988 D.C. App. LEXIS 192 (1988).

Charging document must be sufficient to put accused on notice of nature of crime against which he must defend. In re D.B.H., 549 A.2d 351, 1988 D.C. App. LEXIS 192 (1988).

Providing juvenile's counsel with a copy of complaint setting forth important information relevant to case and identifying charge as assault with intent to kill while armed was sufficient to provide juvenile with de facto notice of charge and, as such, comported with due process so as to authorize the family division of the superior court to postpone the filing of the delinquency petition and to order the juvenile detained. D.C. Code 1981, § 16-2312(a-g); U.S. Const.Amend. 14. In re T.G.T., 515 A.2d 1086, 1986 D.C. App. LEXIS 439 (1986).

Petition given to juvenile did not deny due process requirement of adequate notice applicable to juvenile proceedings even though it was claimed that the petition was defective for failing to allege ownership of the premises which he allegedly burglarized. In re M.D.J., 346 A.2d 733, 1975 D.C. App. LEXIS 266 (1975).

#### **Personal knowledge.**

Youth division officer, who has not participated in arrest of juvenile, has gathered "personal knowledge" of circumstances which make up the "case" concerning the juvenile while performing his functions and he may verify petition to bring juvenile within jurisdiction of juvenile court. D.C. Code §§ 16-2302, 16-2306(a). In re Taylor, 268 A.2d 522, 1970 D.C. App. LEXIS 254 (App. 1970).

#### **Purpose of pleading.**

Rationale that purpose of pleading is to facilitate proper decision on merits has special significance in juvenile court proceedings. D.C. Code § 16-2305(e). In re G., 305 A.2d 529, 1973 D.C. App. LEXIS 303 (1973).

Juvenile Rule and Criminal Rule relating to petition serve same function of informing individual against whom complaint is made of precise nature of alleged offense. D.C. Code § 16-2305(e); D.C. Code SCR, Juvenile Rule 7(e); D.C. Code SCR, Criminal Rule 7(e). In re G., 305 A.2d 529, 1973 D.C. App. LEXIS 303 (1973).

#### **Review.**

Notwithstanding the deficiency of petition, which was insufficient to support adjudication

of child as habitually disobedient and ungovernable, rather than an outright reversal or dismissal thereby producing irrational consequences flowing from a forced reunion in an apparently deteriorated family structure Court of Appeals remanded cause to trial court for commencement of such further proceedings within 30 days as might be deemed just in circumstances; if further proceedings were not begun within that time adjudication would be vacated. D.C. Code §§ 16-2301(8)(A)(iii), (8)(B), 17-306. In re C.G.S., 372 A.2d 1017, 1977 D.C. App. LEXIS 470 (1977).

#### **Untimely filings.**

Technical violation of time limitations set forth in juvenile code section generally requiring government to file petition in delinquency case within seven days after complaint has been referred to Director of Social Services does not require automatic dismissal or preclude subsequent filing of petition after dismissal of case without prejudice for time limit violation, even though code section provides that petition "shall" be timely filed; whether sanction of dismissal of petition or some other sanction should be imposed will depend upon facts and circumstances of case and determination by trial court of appropriate sanction in exercise of its sound discretion. D.C. Code 1981, § 16-2305(d). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Juvenile failed to establish that government's delay in petitioning delinquency case after initial dismissal resulted from more than negligence, despite claim that government acted in bad faith in order to gain tactical advantage, and delay would therefore not support due process speedy trial claim; government's inability to file petition only two days after case was referred by United States Attorney's office, resulting in dismissal without prejudice, would not be viewed as evidencing lack of good faith, particularly as government represented that it required additional time to determine whether to prosecute juvenile as adult, and investigation by officer of federal government did not relieve Corporation Counsel of its statutory responsibility to make independent determination concerning whether to petition case. U.S. Const.Amend. 14; D.C. Code 1981, § 16-2305(c, d). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

## **§ 16-2305.01. Findings.**

The Council finds that:

(1) Juveniles who are not under proper supervision and control or who are arrested for certain nonviolent offenses are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others.

## § 16-2305.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(2) It shall be the policy of the District of Columbia that with respect to these juveniles the District of Columbia shall be guided by the assumption that juveniles who previously have had little or no contact with the juvenile justice system and who do not represent a danger to the public safety may benefit from an alternative to adjudication that is noncriminal, reformatory and protective in nature.

(3) Accordingly, the District of Columbia recognizes the appropriateness of alternatives to adjudication, which may include diversion programs and services, for certain juveniles who are in need of supervision or who are arrested for certain nonviolent offenses. The remedies and procedures provided herein shall not be in derogation of parental rights and responsibilities under existing laws.

(Apr. 9, 1997, D.C. Law 11-199, § 2(b), 43 DCR 4385; Mar. 24, 1998, D.C. Law 12-81, § 10(y), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-2305.1.

**Legislative history of Law 11-199.** — Law 11-199, the “Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996,” was introduced in Council and assigned Bill No. 11-622, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-361

and transmitted to both Houses of Congress for its review. D.C. Law 11-199 became effective on April 9, 1997.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Editor’s notes.** — Section 28(c)(1) of D.C. Law 15-354 provided that the section designation of § 16-2305.1 of the District of Columbia Official Code is redesignated as § 16-2305.01.

### § 16-2305.02. Preliminary probation conferences; adjustment process.

(a) For the purposes of this section, the term:

(1) “Adjustment process” means the process by which the Social Services Division and the Office of the Corporation Counsel may proceed where a determination is made that the filing of a delinquency or persons in need of supervision petition is not in the best interests of the child or public.

(2) “Nonviolent offenses” means those offenses identified as such by the Office of the Corporation Counsel in an interagency agreement with the Social Services Division, but shall not include a “crime of violence” as defined in section 1(f) of An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; § 22-4501(f)), or possessory firearm offenses.

(b) Where the Director of Social Services recommends, after a preliminary inquiry is conducted pursuant to D.C. Official Code § 16-2305(a), that it is not in the best interests of the child or public to recommend the filing of a delinquency or persons in need of supervision petition, the Director of Social Services shall so recommend to the Office of the Corporation Counsel, and the Corporation Counsel shall make a determination of the suitability of the case for adjustment, which may include diversion. The Director of Social Services



shall permit any participant who is represented by a lawyer to be accompanied by the lawyer at any preliminary conference.

(c) In order to determine whether the case is suitable for adjustment, the Director of Social Services, in consultation with the Office of the Corporation Counsel, shall consider the following circumstances, among others:

- (1) The age of the child;
- (2) Whether the conduct allegedly involved:
  - (A) An act or acts causing or threatening to cause death, substantial pain, or serious physical injury to another;
  - (B) The use or knowing possession of a dangerous instrument or deadly weapon;
  - (C) The use or threatened use of violence to compel a person to engage in sexual intercourse, deviant sexual intercourse, or sexual contact;
  - (D) The use or threatened use of violence to obtain property;
  - (E) The use or threatened use of deadly physical force with the intent to restrain the liberty of another;
  - (F) The intentional starting of a fire or the causing of an explosion which resulted in damage to a building;
  - (G) A serious risk to the welfare and safety of the community; or
  - (H) An act which seriously endangered the safety of the child or another person;
- (3) Whether there is a substantial likelihood that the child will not appear at scheduled conferences with the Social Services Division or with an agency to which he or she may be referred;
- (4) Whether there is a substantial likelihood that the child will not participate in the diversion programs or services developed and recommended by the Social Services Division or cooperate during the adjustment process;
- (5) Whether there is a substantial likelihood that in order to adjust the case successfully, the child would require services that could not be administered effectively in less than 6 months;
- (6) Whether there is a substantial likelihood that the child will, during the adjustment process:
  - (A) Commit an act which, if committed by an adult, would be a crime; or
  - (B) Engage in conduct that endangers the physical or emotional health of the child or a member of the child's family or household; or
  - (C) Harass the complainant, victim, or person seeking to have a delinquency petition filed, or a member of that person's family or household, where demonstrated by prior conduct or threats;
- (7) Whether there is pending another proceeding to determine whether the child is a child in need of supervision or a delinquent;
- (8) Whether there have been prior adjustments or adjournments in contemplation of dismissal in other delinquency proceedings;
- (9) Whether there has been a prior adjudication of the child as a delinquent child or child in need of supervision;
- (10) Whether there is a substantial likelihood that the adjustment process would not be successful unless the child is temporarily removed from his or her

home and that such removal could not be accomplished without invoking the court process;

(11) Whether a proceeding has been or will be instituted against another person for acting jointly with the child; and

(12) Whether the juvenile case would otherwise have been petitioned by the Office of the Corporation Counsel.

(d) At the preliminary inquiry, the Director of Social Services shall inform each person entitled to be present of the function and limitations of, and the alternatives to, the adjustment process, and that:

(1) He or she has a right to participate in the adjustment process, which may include, but is not limited to, periodic drug testing, attendance at parenting classes, or participation in counseling, treatment, or educational programs;

(2) The Social Services Division is not authorized to and cannot compel any person to appear at any conference, produce any papers, or visit any place absent court order;

(3) The person seeking to have a delinquency petition filed is entitled to have access to the Office of the Corporation Counsel at any time for the purpose of requesting that a petition be filed;

(4) The adjustment process may continue for a period of 6 months and may be extended for an additional six months upon written application to the Director of Social Services and the Office of the Corporation Counsel and approval thereof by both;

(5) Statements made to the Social Services Division or the Office of the Corporation Counsel by the child or his or her parent shall not be admissible for any purpose during any subsequent court proceeding and are subject to the confidentiality provisions contained in this chapter; and

(6) If the adjustment process is commenced and not successfully concluded, the persons participating therein may be notified orally or in writing of that fact by the Social Services Division, that the case will be referred to the Office of the Corporation Counsel and that oral notification must be confirmed in writing.

(Apr. 9, 1997, D.C. Law 11-199, § 2(b), 43 DCR 4385; Mar. 24, 1998, D.C. Law 12-81, § 10(z), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-2305.2.

**Legislative history of Law 11-199.** — For legislative history of D.C. Law 11-199, see Historical and Statutory Notes following § 16-2305a.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Editor's notes.** — Section 28(c)(1) of D.C. Law 15-354 provided that the section designation of § 16-2305.2 of the District of Columbia Official Code is redesignated as § 16-2305.02.

## § 16-2306. Service of summons and petition.

(a) When a petition is filed, the Division shall set a time for initial appearance and shall direct the issuance of summonses. If delinquency or need of supervision is alleged, a summons, together with a copy of the petition, shall be served upon the child and upon his spouse (if any) and his parent, guardian,



or other custodian. If neglect is alleged, the summons, together with a copy of the petition, shall be served on the parent, guardian, or other custodian of the child named in the petition. Where appropriate to the proper disposition of the case, the Division may direct service of summonses upon other persons. A summons issued pursuant to this section shall advise the parties of the right to counsel as provided in section 16-2304.

(b) Upon request of the Corporation Counsel, the Division may endorse upon the summons an order directing the parent, guardian, or other custodian of the child to appear personally at the hearing and directing the person having physical custody or control of the child to bring the child to the hearing.

(c) If it appears, from information presented to the Division, that there are grounds to take the child into custody as provided in section 16-2309, or that the child may leave or be removed from the jurisdiction of the Superior Court or will not be brought to the hearing, notwithstanding service of the summons, the Division may endorse upon the summons an order that the officer serving summons shall at once take the child into custody. If the child is taken into custody under this section, the provisions of sections 16-2309 to 16-2312 shall apply.

(Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 527, Pub. L. 91-358, title I, § 121(a).)

**Prior Codifications.** — 1981 Ed., § 16-2306. 1973 Ed., § 16-2306.

## § 16-2307. Transfer for criminal prosecution.

(a) Within twenty-one days (excluding Sundays and legal holidays) of the filing of a delinquency petition, or later for good cause shown, and prior to a factfinding hearing on the petition, the Corporation Counsel may file a motion, supported by a statement of facts, requesting transfer of the child for criminal prosecution, if —

(1) the child was fifteen or more years of age at the time of the conduct charged, and is alleged to have committed an act which would constitute a felony if committed by an adult;

(2) the child is sixteen or more years of age and is already under commitment to an agency or institution as a delinquent child;

(3) a minor eighteen years of age or older is alleged to have committed a delinquent act prior to having become eighteen years of age; or

(4) a child under 18 years of age is charged with the illegal possession or control of a firearm within 1000 feet of a public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the above entities. For the purposes of this paragraph “playground” means any facility intended for recreation, open to the public, and with any portion of the facility that contains 1 or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards. For the purposes of this paragraph “video arcade” means any facility legally accessible to persons

under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines. For the purposes of this paragraph "youth center" means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provide athletic, civic, or cultural activities.

(b) Following the filing of the motion by the Corporation Counsel, summonses shall be issued and served in conformity with the provisions of section 16-2306.

(c) When there are grounds to believe that the child is incompetent to proceed, the Division shall stay the proceedings for the purpose of obtaining an examination pursuant to Chapter 5A of Title 24 [§ 24-531.01 et seq.]. If the Division determines, pursuant to Chapter 5A of Title 24 [§ 24-531.01 et seq.], that the child is incompetent to proceed, the Division shall not proceed to a determination under subsection (d) of this section unless it subsequently has determined that the competency of the child has been restored.

(d)(1)(A) Except as provided in subsection (c) of this section, the Division shall conduct a hearing on each transfer motion to determine whether to transfer the child for criminal prosecution. The hearing shall be held within 30 days (excluding Sundays and legal holidays) after the filing of the transfer motion. Upon motion of the child or the Corporation Counsel, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the transfer motion, the Division must state in the order the extraordinary circumstances for the delay.

(B) The judicial decision whether to transfer the child shall be made within 30 days (excluding Sundays and legal holidays) after the conclusion of the transfer hearing. For good cause shown, the Division may extend the time in which to issue its decision by an additional period not to exceed 30 days (excluding Sundays and legal holidays).

(2)(A) The Division shall order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation of the child.

(B) A statement of the Division's reasons for ordering the transfer shall accompany the transfer order. The Division's findings with respect to each of the factors set forth in subsection (e) of this section relating to the public welfare and protection of the public security shall be included in the statement. The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

(e) Evidence of the following factors shall be considered in determining whether there are reasonable prospects for rehabilitating a child prior to his majority and whether it is in the interest of the public welfare to transfer for criminal prosecution:

(1) the child's age;

(2) the nature of the present offense and the extent and nature of the child's prior delinquency record;



(3) the child's mental condition;

(4) the child's response to past treatment efforts including whether the child has absconded from the legal custody of the Mayor or a juvenile institution;

(5) the techniques, facilities, and personnel for rehabilitation available to the Division and to the court that would have jurisdiction after transfer; and

(6) The potential rehabilitative effect on the child of providing parenting classes or family counseling for one or more members of the child's family or for the child's caregiver or guardian.

(e-1) For purposes of the transfer hearing the Division shall assume that the child committed the delinquent act alleged.

(e-2) There is a rebuttable presumption that a child 15 through 18 years of age who has been charged with any of the following offenses, should be transferred for criminal prosecution in the interest of public welfare and the protection of the public security:

(1) Murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense;

(2) Any offense listed in paragraph (1) of this subsection and any other offense properly joinable with such an offense;

(3) Any crime committed with a firearm; or

(4) Any offense that if the child were charged as an adult would constitute a violent felony and the child has three or more prior delinquency adjudications.

(f) Prior to a transfer hearing, a study and report, in writing, relevant to the factors in subsection (e), shall be made by the Director of Social Services. This report and all social records that are to be made available to the judge at the transfer hearing shall be made available to counsel for the child and to the Corporation Counsel at least three days prior to the hearing.

(g) A judge who conducts a hearing pursuant to this section shall not, over the objection of the child for whom a motion to transfer was filed, participate in any subsequent factfinding proceedings relating to the offense.

(h) Transfer of a child for criminal prosecution terminates the jurisdiction of the Division over the child with respect to any subsequent delinquent act; except that jurisdiction of the Division over the child is restored if (1) the criminal prosecution is terminated other than by a plea of guilty, a verdict of guilty, or a verdict of not guilty by reason of insanity, and (2) at the time of the termination of the criminal prosecution no indictment or information has been filed for criminal prosecution for an offense alleged to have been committed by the child subsequent to transfer.

(Dec. 23, 1963, 77 Stat. 588, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 527, Pub. L. 91-358, title I, § 121(a); Feb. 27, 1990, D.C. Law 8-71, § 2, 36 DCR 7746; May 15, 1993, D.C. Law 9-272, § 101, 40 DCR 796; Feb. 5, 1994, D.C. Law 10-68, § 20(b), 40 DCR 6311; Aug. 18, 1994, D.C. Law 10-150, § 2, 41 DCR 2594; Mar. 16, 1995, D.C. Law 10-227, § 3(b), 42 DCR 4; Apr. 12, 2000, D.C. Law 13-91, § 142(c), 47 DCR 520; Mar. 17, 2005, D.C. Law 15-261, §§ 202(b), 402, 52 DCR 1188; May 24, 2005, D.C. Law 15-358, § 203, 53)

**Cross references.** — Mental retardation, proceeding when child brought before Family Division appears at least moderately mentally retarded, see § 21-1114.

**Prior Codifications.** — 1981 Ed., § 16-2307.

1973 Ed., § 16-2307.

**Effect of amendments.** — D.C. Law 13-91, in par. (e-2)(1), substituted “first degree sexual abuse” for “forcible rape”.

D.C. Law 15-261 rewrote subsecs. (c) and (d) which had read:

“(c) When there are grounds to believe the child is substantially retarded or mentally ill, the Division shall stay the proceedings for the purpose of obtaining an examination. After examination, the Division shall proceed to a determination under subsection (d) of this section unless it determines that the child is incompetent to participate in the proceedings, in which event it shall order the child committed to a mental hospital pursuant to section 16-2315 or section 24-501(a).

“(d) Unless a commitment under subsection (c) of this section has intervened, the Division shall conduct a hearing on each transfer motion to determine whether to transfer the child for criminal prosecution. This hearing shall be held within ten days (excluding Sundays and legal holidays) of the filing of the transfer motion. The Division shall order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation. A statement of the Division’s reasons for ordering the transfer shall accompany the transfer order. The Division’s findings with respect to each of the factors set forth in subsection (e) of this section relating to the public welfare and protection of the public security shall be included in the statement. This statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.”

Law 15-358, in subsec. (c), substituted “Chapter 5A of Title 24” for “section 24-501”.

**Legislative history of Law 8-71.** — Law 8-71, the “District of Columbia Public School Firearm Prohibition Act of 1989,” was introduced in Council and assigned Bill No. 8-240, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1989, and October 24, 1989, respectively. Signed by the Mayor on November 2, 1989, it was assigned Act No. 8-108 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-272.** — Law 9-272, the “Criminal and Juvenile Justice Re-

form Act of 1992,” was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 10-150.** — Law 10-150, the “Youth Facilities Firearm Prohibition Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-265, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-233 and transmitted to both Houses of Congress for its review. D.C. Law 10-150 became effective on August 18, 1994.

**Legislative history of Law 10-227.** — For legislative history of D.C. Law 10-227, see Historical and Statutory Notes following § 16-2301. 8 3.

**Legislative history of Law 13-91.** — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 15-358.** — Law 15-358, the “Incompetent Defendants Criminal Commitment Act of 2004,” was introduced in Council and assigned Bill No. 15-967, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-748 and transmitted to both Houses of Congress for its review. D.C. Law 15-358 became effective on May 24, 2005.



## CASE NOTES

## ANALYSIS

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**Admissibility of evidence.**

Under statute enabling impeachment of witness by proof that he has been convicted of criminal offenses under stated conditions, conviction suffered by defendant in North Carolina at age of 16 was not inadmissible merely because, had offense occurred in the District of Columbia, defendant would not have been subjected to criminal prosecution as an adult. D.C. Code 11-914, 14-305, 14-305(b)(2)(A)(ii), (b)(2)(B), 16-2307, 16-2307(a)(1). *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

**Authority of U.S. attorney.**

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of family division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by statute, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in family division. D.C. Code §§ 11-1101(13), 11-1501 et seq., 16-2301(3)(A), 16-2307; 18 U.S.C. § 5010(a). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dis-

missed charges following the failure of the grand jury to indict. In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

**Child, generally.**

"Child" as used in the statute to determine whether individual should be tried as an adult in criminal court without judicial transfer excludes juvenile when he or she is charged with assault with intent to commit murder, but not when he or she is charged with assault with intent to kill. D.C. Code 1981, §§ 16-2301(3), (3)(A), 16-2307, 22-501. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

**Construction and application.**

Task of judge at hearing on whether to transfer juvenile for adult prosecution is to make informed prediction as to whether, if treated as juvenile, respondent, at end of road, (1) will probably no longer be dangerous, and (2) will probably have been rehabilitated. D.C. Code 1981, § 16-2307(d). In re S.M., 729 A.2d 326, 1999 D.C. App. LEXIS 93 (1999).

Decision to transfer juvenile for criminal prosecution as adult involves two criteria; first requires trial court to consider danger to public welfare and safety if juvenile is not processed as adult, and second focuses court's attention on juvenile's potential for rehabilitation. D.C. Code 1981, § 16-2307(d). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Under amended version of transfer statute, court determining whether to transfer juvenile for criminal prosecution as adult is required to consider both whether interest of public welfare and security would be served by transfer and whether there are no reasonable prospects for juvenile's rehabilitation, and may not grant transfer unless both criteria are satisfied. D.C. Code 1981, § 16-2307(d). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

**Delinquency proceedings, generally.**

Delinquent child is neither considered nor treated as a criminal but as a person needing guidance, care and protection, and safeguards which surround him do not inherently derive from constitution but from social welfare philosophy which forms historical background of Juvenile Court Act. D.C. Code 1961, § 16-2307. In re Elmore, 222 A.2d 255, 1966 D.C. App. LEXIS 213 (App. 1966), remanded by 382 F.2d 125, 127 U.S. App. D.C. 176, 1967 U.S. App. LEXIS 6278 (1967).

Investigation and court proceedings involving determination of a child's delinquency are directed to status and needs of child, and disposition thereof has as its goal not punishment but rehabilitation and restoration of child to

useful citizenship, and end result is that child should not be labeled criminal, he is not punished as a criminal and proceedings against him should be far removed from characteristics of criminal trial. D.C. Code 1961, § 16-2307. In re Elmore, 222 A.2d 255, 1966 D.C. App. LEXIS 213 (App. 1966), remanded by 382 F.2d 125, 127 U.S. App. D.C. 176, 1967 U.S. App. LEXIS 6278 (1967).

### Due process.

Judge is entitled to assume that juvenile committed offense charged for purpose of transfer hearing, and presumption is not inconsistent with juvenile's due process rights because trial itself functions as cure for any reliance on inaccurate allegations made at transfer hearing. 18 U.S.C. § 5032. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

Juveniles in 16-18-year-old age group who are charged with certain enumerated felonies are not denied procedural due process or equal protection of the laws because under the provisions of the District of Columbia Court Reform and Criminal Procedure Act of 1970 the United States attorney is authorized to proceed directly in adult court against such offenders. D.C. Code §§ 16-2301(3)(A)(i), 16-2307; U.S. Const. Amend. 5. United States v. Alexander, 333 F. Supp. 1213, 1971 U.S. Dist. LEXIS 11355 (1971).

Statutes governing competency in juvenile court and transfer proceedings are subject to due process standard requiring that the juvenile has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

While relevant provision of statute governing mental examination of a child alleged to be a delinquent refers only to incompetency to participate "in transfer proceedings" by reason of mental illness, the due process requirement of competency extends beyond that necessary for participation only in the limited issues to be resolved by transfer determinations. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

### Equal protection.

Fact that, in federal jurisdictions other than that of the District of Columbia, juveniles who are charged with violation of federal law and who opt for treatment as an adult have the right of trial by jury does not mean that statute giving Superior Court of the District of Columbia primary jurisdiction over juvenile who is alleged to be delinquent, even though that delinquency is based on violation of federal law, denies equal protection. D.C. Code §§ 16-2301(7), 16-2307. District of Columbia v.

P.L.M., 325 A.2d 600, 1974 D.C. App. LEXIS 277 (1974).

### Habitually beyond control.

"Habitually" within juvenile statute in regard to child habitually beyond control does not possess a criminal connotation and does not necessarily mean entirely, totally, continuously, or exclusively, but suggests rather customary conduct, the result of frequent practice or habit acquired over a period of time. D.C. Code 1961, § 16-2307. In re Elmore, 222 A.2d 255, 1966 D.C. App. LEXIS 213 (App. 1966), remanded by 382 F.2d 125, 127 U.S. App. D.C. 176, 1967 U.S. App. LEXIS 6278 (1967).

Alleged delinquent was not entitled to jury trial in proceeding which was essentially a custody hearing wherein issue was directed to whether child was habitually beyond control of his mother, in absence of showing that right to trial by jury was customary in such a proceeding. D.C. Code 1961, § 16-2307. In re Elmore, 222 A.2d 255, 1966 D.C. App. LEXIS 213 (App. 1966), remanded by 382 F.2d 125, 127 U.S. App. D.C. 176, 1967 U.S. App. LEXIS 6278 (1967).

### Jurisdiction.

#### — In general.

Although juvenile was acquitted of charge of assault with intent to commit murder which authorized transfer to Criminal Division of Superior Court to be prosecuted as adult, Criminal Division did not thereby lose jurisdiction, but instead retained jurisdiction until final disposition of lesser-included and related offenses which ended in deadlock and mistrial; just as mistrial resulting from hung jury would not terminate jeopardy, neither did it terminate pendency of "charge" within meaning of transfer statute. D.C. Code 1981, § 16-2301(3)(A). Partlow v. United States, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Family division did not cease to have jurisdiction over juvenile after adult criminal charges had been filed against him for events which occurred before events which were involved in juvenile delinquency proceeding. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h). In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

Pendency of assault charges against juvenile when charges of possession with intent to distribute heroin were filed immutably committed possession charges to jurisdiction of Criminal Division, and subsequent dismissal of assault charges did not retroactively deprive Criminal Division of jurisdiction over possession charges. D.C. Code 1981, §§ 16-2301(3)(A), 16-2307(h). Montgomery v. United States, 521 A.2d 1150, 1987 D.C. App. LEXIS 534 (1987).

#### — Serious offenses, jurisdiction.

By excluding from definition of "child" 16- and 17-year-olds who are charged with certain



serious offenses, statutory provision for trying juvenile as adult automatically terminates jurisdiction of Family Division and transfers jurisdiction to Criminal Division. D.C. Code 1981, § 16-2301(3). *Partlow v. United States*, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Once United States Attorney charges individual with crime enumerated by statute, individual is properly presented to Criminal Division and Family Division jurisdiction is terminated from that juncture, with accused then receiving full panoply of protections available in adult court, although court does not act in *parens patriae* role as in Family Division; statute provides that term "child" does not include individuals 16 or older who is charged by United States Attorney with enumerated offenses. D.C. Code 1981, § 16-2301(3)(A). *Catlett v. United States*, 545 A.2d 1202, 1988 D.C. App. LEXIS 109 (1988), writ of certiorari denied by 488 U.S. 1017, 109 S. Ct. 814, 102 L. Ed. 2d 803, 1989 U.S. LEXIS 251, 57 U.S.L.W. 3453 (1989).

Pending criminal prosecution of 16-year-old defendant for second-degree murder, under statute deeming an individual not to be a "child" when certain serious offenses are charged, constituted a transfer of defendant to the Criminal Division within meaning of authorizing statute so that Family Division was automatically deprived of jurisdiction over obstruction of justice charge placed against defendant for allegedly using "threats and force" against government witness in the second-degree murder case pending against him in the Criminal Division. D.C. Code §§ 16-2301(3)(A), 16-2307(a-h), (a)(1), 22-703(a). In re C.S., 384 A.2d 407, 1977 D.C. App. LEXIS 247 (1977).

Once an individual who is 16 years of age or older has been charged by United States attorney with a crime pursuant to statute which deems an individual not to be a child when certain serious offenses are charged that individual is deemed transferred for criminal prosecution within meaning of authorizing statute, and the Family Division's jurisdiction is thereby terminated, subject to restoration as prescribed, over a subsequent delinquent act for which there is a criminal statute equally applicable to adults. D.C. Code §§ 16-2301(3), (3)(A), 16-2303, 16-2307, 16-2307(a, h). In re C.S., 384 A.2d 407, 1977 D.C. App. LEXIS 247 (1977).

#### **Nature of alleged offense.**

District court evaluating nature of alleged offenses by juvenile charged with three counts of distribution of cocaine could not consider evidence of the juvenile's alleged involvement in an uncharged drug conspiracy, in determining whether the juvenile could be transferred from juvenile to adult court under the Juvenile Justice and Delinquency Prevention Act based on the "nature of the alleged offense." Compre-

hensive Drug Abuse Prevention and Control Act of 1970, §§ 401, 401(a)(1), 21 U.S.C. §§ 841, 841(a)(1); 18 U.S.C. §§ 5031 et seq., 5032. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

District court may not consider evidence of uncharged crimes in determining to try as an adult a juvenile charged with crime of violence or certain drug offenses based on "the nature of the alleged offense," under the Juvenile Justice and Delinquency Prevention Act. 18 U.S.C. § 5032. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

"Nature of the alleged offense" ground for transferring juvenile to district court for adult prosecution under the Juvenile Justice and Delinquency Prevention Act includes specifics of charged offense, set out in information. 18 U.S.C. § 5032. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

Trial judge's consideration of evidence of uncharged drug conspiracy in determining that "the nature of the alleged offense" justified trying a juvenile as an adult on charges of three counts of cocaine distribution required reversal of decision to transfer juvenile to adult court. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401, 401(a)(1), 21 U.S.C. §§ 841, 841(a)(1); 18 U.S.C. §§ 5031 et seq., 5032. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

#### **Necessity of transfer.**

Defendant who was charged with assault with intent to kill who was 17 years old could not be charged as an adult under statute permitting individuals aged 16 or 17 to be charged as adults for murder or attempted murder without judicial transfer. D.C. Code 1981, §§ 16-2301(3), (3)(A), 16-2307, 22-501. *Logan v. United States*, 483 A.2d 664, 1984 D.C. App. LEXIS 531 (1984).

#### **Presumptions and burden of proof.**

Even when juvenile transfer statute's presumption of dangerousness has been rebutted by juvenile, it retains evidentiary significance, and thus legislative determination that juveniles charged with an enumerated crime present a distinct danger to public safety may still be considered by court in deciding whether transfer is required by the public welfare. D.C. Code 1981, § 16-2307(e-2). In re D.R.J., 734 A.2d 162, 1999 D.C. App. LEXIS 145 (1999).

Although transfer statute requires juvenile to come forward with evidence rebutting presumption of dangerousness, it does not impose on him the burden of persuasion; that burden remains on government, which must prove by a preponderance of the evidence that transfer is dictated by public safety. D.C. Code 1981, § 16-2307(e-2). In re D.R.J., 734 A.2d 162, 1999 D.C. App. LEXIS 145 (1999).

Trial court may permissibly consider whether juvenile accused of violent crime has rebutted statutory presumption in favor of transfer for prosecution as adult when deciding whether district has satisfied its burden to show no reasonable prospects for rehabilitation. D.C. Code 1981, § 16-2307(d, e-2). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Trial court did not abuse its discretion in concluding at transfer hearing that juvenile accused of first-degree murder and crimes related thereto failed to rebut statutory presumption that his transfer for prosecution as adult was in interest of public welfare and protection of public security; juvenile presented testimony of only one witness, who acknowledged that juvenile was at high risk for delinquent behavior and characterized his future potential for violence as "average", and other evidence at transfer hearing established juvenile's prior criminal behavior, threat to public safety in absence of treatment, and uncertainty as to whether juvenile's violent behavior could be curbed even with proper intervention. D.C. Code 1981, § 16-2307(d, e-2). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Failure of juvenile accused of first-degree murder and other offenses related thereto to rebut at his transfer hearing statutory presumption that his case should be transferred for prosecution as adult was relevant to his prospects for rehabilitation; evidence proffered to rebut presumption is germane to issue of rehabilitative prospects in that presumption typically can be rebutted only by evidentiary showing that juvenile is amenable to treatment or rehabilitation, and quality of juvenile's showing is relevant to trial court's consideration of whether District has met its evidentiary burden under rehabilitation criterion for transfer. D.C. Code 1981, § 16-2307(d, e-2). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

In amending requirements for transfer of juvenile offenders for criminal prosecution as adults to create rebuttable presumption of transfer under certain circumstances, district council appeared to intend to make transfer easier with respect to juveniles charged with committing violent crimes; however, in adding new criterion requiring court to evaluate threat to public welfare and security if juvenile is not transferred, council apparently also intended to make transfers more difficult with respect to charges of lesser crimes to which rebuttable presumption does not apply. D.C. Code 1981, § 16-2307(d, e-2). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Under amended version of transfer statute, district must satisfy evidentiary burden both as to danger to public welfare and safety if juvenile is not processed as adult and as to juvenile's

potential for rehabilitation before cases against juveniles not involving violent crimes can be transferred for criminal prosecution. D.C. Code 1981, § 16-2307(d). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

Rebuttable presumption in favor of transfer of juveniles accused of violent crime for prosecution as adults eliminates only one of district's evidentiary burdens, that of showing that juvenile's transfer is in interest of public welfare and protection of public security; district retains burden of showing that juvenile has no reasonable prospects for rehabilitation. D.C. Code 1981, § 16-2307(d, e-2). In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1996).

On defendant's motion to transfer case from criminal division to family division of superior court, Government had burden of proof of jurisdictional fact that defendant, charged with burglary, had attained age of 16 on date of alleged burglary. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). *Choco v. United States*, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

If the government can prove that there are no reasonable prospects for rehabilitation, but a respondent is able to rebut the subsection (e-2) public welfare and safety presumption, the court cannot transfer the respondent for adult prosecution because both prongs of subsection (d) must be satisfied before the transfer can be ordered. In re *Medley*, 123 WLR 1077 (Super. Ct. 1995).

When a juvenile falls within the scope of subsection (e-2)(1) through (4), he or she, rather than the government, bears the burden of rebutting by a preponderance of the evidence, the presumption applicable to the "public welfare and protection of society" prong of the transfer test. In re *Medley*, 123 WLR 1077 (Super. Ct. 1995).

#### **Reasonable prospects for rehabilitation.**

"Reasonable prospects," within meaning of statute requiring transfer of juvenile for adult prosecution if transfer is in interest of public welfare and protection of society and there are no reasonable prospects for rehabilitation, does not mean only the possibility of rehabilitation rather than its probability. D.C. Code 1981, § 16-2307(d). In re S.M., 729 A.2d 326, 1999 D.C. App. LEXIS 93 (1999).

Trial court did not abuse its discretion in concluding at transfer hearing that district established no reasonable prospects for rehabilitation of juvenile accused of first-degree murder and crimes related thereto; trial court considered statutory factors of juvenile's age, nature of his offense and prior delinquency record, his mental condition, his response to past treatment efforts, and techniques, facilities and personnel available for his rehabilitation, noted that juvenile was charged with most



serious offense person can commit in civilized society and had previously committed violent offense, and considered juvenile's failure to rebut statutory presumption of transfer. D.C. Code 1981, § 16-2307(d, e-2) In re J.L.M., 673 A.2d 174, 1996 D.C. App. LEXIS 13 (1999).

Where juvenile has obviously limited ability to discern link between conduct and consequences, disposition judge may reasonably include that rehabilitation of delinquent may necessitate teaching him that conduct does have consequences and that results of antisocial behavior are predictable. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

### **Retransfers.**

Transfer of case to family division by reason of Government's failure to bear its burden of proof that defendant had attained age of 16 on date of alleged burglary did not preclude retransfer of her case for criminal prosecution where Government's failure of proof did not foreclose proof that she was at least 15 years of age on that date or that she was at least 18 years of age on date of request for transfer for criminal prosecution. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

### **Review.**

Order transferring juvenile from juvenile to adult court pursuant to the Juvenile Justice and Delinquency Prevention Act is "final decision" appealable under collateral order doctrine. 18 U.S.C. § 5032; 18 U.S.C. § 1291. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

Denial of motion to transfer prosecution of juvenile as adult back to Family Court is appealable as final order. Partlow v. United States, 673 A.2d 642, 1996 D.C. App. LEXIS 38 (1996).

Appeal from determination by judge of criminal division, superior court, that defendant was not a juvenile was a final and appealable order. D.C. Code §§ 16-2307, 16-2327. Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

### **Right to juvenile prosecution.**

Unless transferred, juvenile has statutory right under the Juvenile Justice and Delinquency Prevention Act not to be tried as criminal defendant. 18 U.S.C. § 5031 et seq. In re Sealed Case, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

A defendant's asserted right to disposition of charge in juvenile proceedings is forever lost if not resolved in his or her favor before jeopardy has attached. D.C. Code §§ 16-2301(3), 16-2302, 16-2302(b), 16-2307, 22-1801(a, b), 23-

1327. Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

### **Subsequent delinquent acts.**

"Subsequent delinquent act," within meaning of code section providing that transfer of child for criminal prosecution terminates jurisdiction of Family Division over child with respect to any subsequent delinquent act, refers to act which occurs after adult criminal charges have been filed; relevant date for determining whether Family Division has jurisdiction is date on which juvenile was charged with adult offense, and not date on which offense occurred. D.C. Code 1981, § 16-2307(h). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

### **Sufficiency of evidence.**

Evidence supported trial court's decision to transfer juvenile for criminal prosecution; juvenile had been charged with two counts of murder and one count of assault with intent to murder, mental health experts could not say with confidence that four years of treatment would reduce juvenile's risk of violence by age 21, and there were no controlled facilities able to provide juvenile with the necessary treatment. D.C. Code 1981, § 16-2307. In re D.R.J., 734 A.2d 162, 1999 D.C. App. LEXIS 145 (1999).

Evidence on pretrial motion to transfer case from criminal division to family division that defendant was between 17 and 20 years of age, or in excess of 18 years of age in May or June, 1977, tended to prove only that she attained 18 years of age sometime before May or June, 1977, not that she attained that age by April 17, 1977, and finding that she had attained age of 16 on April 17, 1975, date of alleged burglary, was without support in the record and thus Government did not meet its burden of proving she was not a juvenile. D.C. Code §§ 16-2302(a), 16-2307, 16-2307(a)(1, 3), (e). Choco v. United States, 383 A.2d 333, 1978 D.C. App. LEXIS 492 (1978).

Psychological, neurological, and physiological evidence established that juvenile was incompetent to participate in proceedings to transfer matter for adult prosecution; despite technical differences and whatever their opinions on exact diagnosis or their inability to specify the precise etiology of juvenile's symptoms, psychologists and neurologists were unanimous in finding signs and symptoms explaining abnormalities observed in juvenile by psychiatrists. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

### **Transfer hearing.**

Where two other judges of the United States District Court for the District of Columbia had ruled with conflicting results on whether a defendant between the age of 16 and 18 who is charged with certain specified felonies is denied

procedural due process because they may be tried in adult court without transfer hearing whereas certain other juveniles are entitled to transfer hearing before adult proceedings can be commenced, the court would consider the issue as if it were before the court as matter of first impression. D.C. Code §§ 16-2301(3)(A)(i), 16-2307; U.S. Const. Amend. 5. *United States v. Alexander*, 333 F. Supp. 1213, 1971 U.S. Dist. LEXIS 11355 (1971).

Although 17-year-old defendant was initially petitioned as a juvenile in Family Division on a charge of assault with intent to kill, a transfer hearing was not required before defendant, following death of victim some two months after the assault, could be charged by the United States Attorney as an adult with second-degree murder. D.C. Code §§ 16-2301(3)(A), 16-2307, 22-2403. *Pendergrast v. United States*, 332 A.2d 919, 1975 D.C. App. LEXIS 326 (1975).

#### **Validity.**

Allowing judge at transfer hearing to presume that allegations of uncharged criminal acts are true, for purposes of determining

whether juvenile should be transferred to adult court based on "the nature of the alleged offense" under the Juvenile Justice and Delinquency Prevention Act, would violate juvenile's due process rights, although if juvenile were entitled to rebut uncharged offenses at transfer hearing, due process would not be an issue. 18 U.S.C. § 5032; U.S.C. Const. Amends. 5, 14. *In re Sealed Case*, 893 F.2d 363, 1990 U.S. App. LEXIS 348 (C.A.D.C. 1990).

Juvenile transfer statute did not violate juvenile's due process right to challenge evidence against him, despite statutory presumption at such hearing that juvenile committed offenses with which he was charged; due process did not demand probable cause determination that juvenile was guilty of criminal offense as predicate to transfer and, even if it did, juvenile in fact received such hearing when police officer testified at juvenile's initial hearing and juvenile, represented by counsel, was afforded opportunity to confront and contest evidence against him. U.S. Const. Amend. 14; D.C. Code 1981, §§ 16-2307, 16-2307(e-1). *In re W.T.L.*, 656 A.2d 1123, 1995 D.C. App. LEXIS 52 (1995).

## **§ 16-2308. Initial appearance.**

The initial appearance, before a judge assigned to the Division, of a child named in a delinquency or need of supervision petition or of the parent, guardian, or custodian of a child named in a neglect petition shall be at the time set forth in the summons, which shall be not later than five days after the petition has been filed. At the initial appearance, the child and his parent, guardian, or custodian shall be advised of the contents of the petition and of the right to counsel as provided in section 16-2304. At the initial appearance the child, or in neglect cases the parent, guardian, or custodian, may admit or deny the allegations in the petition, but it shall not be necessary at the initial appearance for the Corporation Counsel to establish probable cause to believe that the allegations in the petition are true. At the initial appearance, the judge may set the time for the fact-finding hearing or continue the matter until a later time. Failure to hold the initial appearance at the time specified shall not be grounds for dismissal of the petition. This section shall not apply in any case where, prior to or at the time of the initial appearance, a detention or shelter care hearing is required by section 16-2312.

(Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I, § 121(a).)

**Prior Codifications.** — 1981 Ed., § 16-2308. 1973 Ed., § 16-2308.

### **CASE NOTES**

#### **Probable cause hearing.**

In view of precautionary measures required

before filing of delinquency petition, including inquiry by corporation counsel as to facts and



law, fact that no probable cause hearing is required when juvenile is not ordered detained does not violate standard of fundamental fairness. D.C. Code §§ 16-2304(a), 16-2305(a-d),

16-2308, 16-2310, 16-2312(e, f). M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

## § 16-2309. Taking into custody.

(a) A child may be taken into custody —

(1) pursuant to order of the Division under section 16-2306 or 16-2311;

(2) by a law enforcement officer when he has reasonable grounds to believe that the child has committed a delinquent act;

(3) by any employee of the Agency authorized to do so, or a law enforcement officer, when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary;

(4) by any employee of the Agency authorized to do so, or a law enforcement officer, after he or she has consulted with the Director of the Agency, or his or her designee, pursuant to § 4-1301.07(b) when the employee or the officer has reasonable grounds to believe that the child is suffering from illness or injury or otherwise is endangered and that the child's removal from his or her surroundings is necessary;

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian;

(6) by the Director of the Agency or his or her designee, upon written notification by the chief executive officer of a hospital located in the District of Columbia, that the child has resided in the hospital for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian or custodian of the child, as established by the hospital admission records, has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(7) by a law enforcement officer when the officer has reasonable grounds to believe that the child, who is not in school on a day when school is in session, is of compulsory school age as required by section 1(a) of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-202);

(8) by the Director of Social Services, pursuant to section 16-2337;

(9) by a law enforcement officer when the officer has reasonable grounds to believe that the child has violated a court order;

(10) by the Director of the Department of Youth Rehabilitation Services when a child committed to the legal custody of the Department of Youth Rehabilitation Services absconds from a community-based placement or violates any of the terms of his or her aftercare placement. For the purposes of this paragraph, the term "aftercare placement" means the placing of a child who has been committed to the legal custody of the Department of Youth Rehabilitation Services in the community under the supervision of a trained social worker.

(b) A child under the age of 13 who is taken into custody by a law enforcement officer, other than an officer in the U.S. Marshals Service, shall remain in the immediate physical presence of a law enforcement officer pending release or delivery pursuant to section 16-2311(a).

(Dec. 23, 1963, 77 Stat. 589, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(c), 24 DCR 3341; Aug. 13, 1986, D.C. Law 6-140, § 2(a), 33 DCR 3827; June 8, 1990, D.C. Law 8-134, § 2(b), 37 DCR 2613; Feb. 5, 1994, D.C. Law 10-68, § 20(c), 40 DCR 6311; Aug. 25, 1994, D.C. Law 10-159, § 2, 41 DCR 4884; Apr. 9, 1997, D.C. Law 11-255, § 18(f), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 10(aa), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-258, § 2(a), 46 DCR 1314; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(4), 48 DCR 2043; Mar. 17, 2005, D.C. Law 15-261, § 502(a), 52 DCR 1188; Apr. 13, 2005, D.C. Law 15-353, § 402, 52 DCR 2331; Mar. 2, 2007, D.C. Law 16-191, § 39, 53 DCR 6794.)

**Cross references.** — Child abuse and neglect, removal of child from home, alternative placements, see § 4-1301.07.

Child abuse and neglect, temporary custodial placement, removal of child from home, see § 4-1303.04.

Police investigation of alleged child abuse and neglect, see § 4-1301.05.

**Prior Codifications.** — 1981 Ed., § 16-2309.

1973 Ed., § 16-2309.

**Effect of amendments.** — D.C. Law 13-277 substituted "Director of the Agency" for "Chief of the Child Protective Services Division of the Department of Human Services" throughout the section; in subsec. (a)(3), substituted "any employee of the Agency authorized to do so, or a law enforcement officer," for "a law enforcement officer"; and, in subsec. (a)(4), substituted "any employee of the Agency authorized to do so, or a law enforcement officer" for "a law enforcement officer" and "§ 4-1301.07(b), when the employee or" for "§ 4-1301.07(b) when".

D.C. Law 15-261, in subsec. (a), made nonsubstantive changes at the end of par. (7) and (8), and added par. (9).

D.C. Law 15-353, in subsec. (a), made nonsubstantive changes in pars. (8) and (9), and added par. (10).

D.C. Law 16-191, in subsecs. (a)(8), (9), and (10), validated previously made technical corrections.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 402 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) amendment of section, see § 402 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) amendment of section, see § 402 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) amendment of section, see § 2(a) of the Juvenile Justice Temporary Act of 2004 (D.C. Law 15-223, March 16, 2005, law notification 52 DCR 3549).

For temporary (225 day) amendment of section, see § 402 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) amendment of section, see § 2(a) of the Juvenile Justice Emergency Act of 2004 (D.C. Act 15-497, July 19, 2004, 51 DCR 7844).



For temporary (90 day) amendment of section, see § 2(a) of Juvenile Justice Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-547, October 12, 2004, 51 DCR 9844).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) amendment of section, see § 2(a) of Juvenile Justice Second Congressional Review Emergency Act of 2004 (D.C. Act 15-727, January 19, 2005, 52 DCR 1952).

For temporary (90 day) amendment of section, see § 402 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 6-140.** — For legislative history of D.C. Law 6-140, see Historical and Statutory Notes following § 16-2310.01.

**Legislative history of Law 8-134.** — For legislative history of D.C. Law 8-134, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 10-68.** — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 16-2307.

**Legislative history of Law 10-159.** — Law 10-159, the "Police Truancy Enforcement Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-275 and transmitted to both Houses of Congress for its review. D.C. Law 10-159 became effective on August 25, 1995.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-258.** — Law 12-258, the "Home and Community Juvenile Probation Supervision Act of 1998," was introduced in Council and assigned Bill No. 12-596. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-610 and transmitted to both Houses of Congress for its review. D.C. Law 12-258 became effective April 20, 1999.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 15-353.** — Law 15-353, the "Child and Youth, Safety and Health Omnibus Amendment Act of 2004," was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

## CASE NOTES

### Delinquent acts.

In §§ 1983 action arising out of 12-year-old's arrest for eating french fry in rail transit station, district court would take judicial notice of the fact that, under District of Columbia law, juveniles could not be issued a citation in lieu of arrest for a violation of statute making it unlawful to consume food or drink in rail transit station owned or operated by metropolitan transit authority and located within District of Columbia. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148,

363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

Given that arrest of minor for violating statute making it unlawful to consume food or drink in rail transit station was supported by probable cause, deprivation of minor's liberty comported with due process requirements, and therefore claim that District of Columbia policy precluding issuance of citation as enforcement means with respect to such offenses by juveniles violated minor's equal protection rights was subject only to rational basis review, despite contention that claim implicated funda-

mental right to be free from physical restraint by government and consequently warranted heightened standard of review. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

District of Columbia policy of not issuing citations to juveniles believed to have violated statute making it unlawful to consume food or drink in rail transit station was rationally related to District's interests in effectively enforcing its laws and ordinances, rehabilitating

delinquent juveniles, and notifying and involving parents in rehabilitation measures, and thus did not violate equal protection rights of 12-year-old who was arrested for eating french fry in transit station, particularly given that statute suggested that officers could have taken steps short of arrest and there was no indication that policy was motivated by animosity toward juveniles. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

## § 16-2310. Criteria for detaining children.

(a) A child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required —

(1) to protect the person or property of others or of the child, or

(2) to secure the child's presence at the next court hearing.

(a-1)(1) There shall be a rebuttable presumption that detention is required to protect the person or property of others if the judicial officer finds by a substantial probability that the child:

(A) Committed a dangerous crime or a crime of violence while armed with or having readily available a pistol, firearm, or imitation firearm; or

(B) Committed CPWL, carrying a pistol without a license.

(2) For the purposes of this subsection, the terms "dangerous crime" and "crime of violence" shall have the same meanings as provided in section 23-1331, except that these terms shall not include:

(A) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);

(B) Any felony offense under Chapter 9 of Title 48 (Controlled Substances);

(C) Burglary; or

(D) Arson.

(b) A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required —

(1) to protect the person of the child, or

(2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself and that

(3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

(c) The criteria for detention and shelter care provided in this section, as implemented by rules of the Superior Court, shall govern the decisions of all persons responsible for determining whether detention or shelter care is warranted prior to the factfinding hearing.

(d) Whenever a child has been placed in shelter care, the child's parent,



guardian or custodian shall be permitted visitation at least weekly unless it appears to the judge that such visitation rights would create an imminent danger to or be detrimental to the well-being of the child, in which case, the judge shall either prescribe a schedule of visitation rights or order that visitation rights not be allowed.

(e) Fact finding hearings for children ordered into secure detention or ordered into shelter care shall be held within the time limits provided in this subsection.

(1)(A) Except as provided in subparagraph (B) of this paragraph and paragraph (2) of this subsection, whenever a child has been ordered into secure detention before a factfinding hearing pursuant to §§ 16-2310 through 16-2313, the factfinding hearing set forth in § 16-2316 shall commence not later than 30 days from the date at which the Family Court ordered the child to be detained pursuant to § 16-2312.

(B) Except as provided in paragraph (2) of this subsection, whenever a child is charged with murder, assault with intent to kill, first degree sexual abuse, burglary in the first degree, or robbery while armed, and the child has been ordered into secure detention before a factfinding hearing pursuant to §§ 16-2310 through 16-2313, the factfinding hearing set forth in § 16-2316 shall commence not later than 45 days from the date at which the Family Court ordered the child to be detained pursuant to § 16-2312.

(C) Except as provided in paragraph (2) of this subsection, whenever a child has been ordered into shelter care before a factfinding hearing pursuant to §§ 16-2310 through 16-2313, the factfinding hearing set forth in § 16-2316 shall commence not later than 45 days from the date at which the Family Court ordered the child to be placed in shelter care pursuant to § 16-2312.

(2)(A) Except as provided in subparagraphs (B) and (C) of this paragraph, upon motion of the Attorney General, for good cause shown, the factfinding hearing of a child ordered into secure detention or a child who is ordered into shelter care may be continued, and the child continued in secure detention or shelter care, for only one additional period, not to exceed 30 days.

(B) Upon motion of the Attorney General, for good cause shown, the factfinding hearing may be continued, and the child continued in secure detention or shelter care, for additional periods not to exceed 30 days each, if:

(i) The child is charged with murder, assault with intent to kill, or first degree sexual abuse;

(ii) The child is charged with a crime of violence, as defined in § 23-1331(4), committed while using a pistol, firearm, or imitation firearm; or

(iii) Despite the exercise of due diligence by the District and the federal agency, DNA evidence, analysis of controlled substances, or other evidence processed by federal agencies has not been completed.

(C)(i) Upon a motion by or on behalf of the child consistent with the rules of the Superior Court of the District of Columbia, the factfinding hearing of a child ordered into secure detention or a child who is ordered into shelter care may be continued for additional periods not to exceed 30 days each.

(ii) A motion made under sub-subparagraph (i) of this subparagraph shall not be construed as a waiver of the child's speedy trial rights under this section nor under the Sixth Amendment of the United States Constitution.

(D) Additional continuances of the factfinding hearing may be granted to the Office of Attorney General if the child is no longer in either secure detention or shelter care.

(3) In determining whether good cause has been shown as required by paragraph (2) of this subsection, the Division shall take into account, among other appropriate matters, and shall state its findings on the record, as to whether:

(A) There has been or will be a delay resulting from other proceedings concerning the child, including, but not limited to, examinations to determine the mental competency or physical capacity of the child; from a hearing with respect to other charges against the child; from any interlocutory or expedited appeal; from the making, or consideration by the Division, of any pretrial motions; and from any proceeding relating to the transfer of the child pursuant to § 16-2307;

(B) Any essential witness is absent or unavailable. For purposes of this subparagraph, an essential witness shall be considered absent when his or her whereabouts are unknown or cannot be determined by due diligence and shall be considered unavailable when his or her presence for the hearing cannot be obtained by due diligence;

(C) Despite the exercise of due diligence, necessary autopsies, medical examinations, fingerprint examinations, ballistic tests, drug analysis, or other scientific tests have not been completed; or

(D) The ends of justice served by continuing the period of detention outweigh the interests of the child and public in a speedy trial.

(4) Upon motion by or on behalf of the child, a child in secure detention or shelter care shall be released from custody or shelter care if the fact finding hearing is not commenced within the time period set forth in this subsection.

(f) No provision of this section shall be construed as a bar to any claim of denial of speedy trial as required by the Sixth Amendment of the United States Constitution.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 529, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 403, 24 DCR 3341; Apr. 9, 1997, D.C. Law 11-179, § 2, 43 DCR 4243; May 5, 2007, D.C. Law 16-308, § 2, 54 DCR 942; Mar. 21, 2009, D.C. Law 17-328, § 2, 56 DCR 661.)

**Prior Codifications.** — 1981 Ed., § 16-2310.

1973 Ed., § 16-2310.

**Effect of amendments.** — D.C. Law 16-308 added subsec. (a-1).

D.C. Law 17-328 rewrote subsec. (e) and added subsec. (f).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(b) of the Juvenile Speedy Trial Equity Temporary Act of 2008 (D.C. Law 17-139, March 26, 2008, law notification 55 DCR 4470).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 302 of

Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 102 of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 101 of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

For temporary (90 day) amendment of section, see § 2 of Crime Reduction Initiative



(Rebuttable Presumption) Congressional Review Emergency Act of 2007 (D.C. Act 17-24, April 19, 2007, 54 DCR 4033).

For temporary (90 day) amendment of section, see § 2(b) of Juvenile Speedy Trial Equity Emergency Act of 2007 (D.C. Act 17-235, December 27, 2007, 55 DCR 240).

For temporary (90 day) amendment of section, see § 2(b) of Juvenile Speedy Trial Equity Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-315, March 19, 2008, 55 DCR 3408).

For temporary (90 day) amendment of section, see § 2 of Juvenile Speedy Trial Equity Emergency Act of 2008 (D.C. Act 17-567, November 3, 2008, 55 DCR 12107).

For temporary (90 day) amendment of section, see § 2 of Juvenile Speedy Trial Equity Congressional Review Emergency Act of 2009 (D.C. Act 18-7, January 29, 2009, 56 DCR 1633).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 11-179.** — Law 11-179, the “Juvenile Detention and Speedy Trial Act of 1996,” was introduced in Council and assigned Bill No. 11-475, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it

was assigned Act No. 11-329 and transmitted to both Houses of Congress for its review. D.C. Law 11-179 became effective on April 9, 1997.

**Legislative history of Law 16-308.** — Law 16-308, the “Rebuttable Presumption to Detain Robbery and Handgun Violation Suspects Act of 2006”, was introduced in Council and assigned Bill No. 16-895, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-643 and transmitted to both Houses of Congress for its review. D.C. Law 16-308 became effective on May 5, 2007.

**Legislative history of Law 17-328.** — Law 17-328, the “Juvenile Speedy Trial Equity Act of 2008”, was introduced in Council and assigned Bill No. 17-431 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 5, 2009, it was assigned Act No. 17-634 and transmitted to both Houses of Congress for its review. D.C. Law 17-328 became effective on March 21, 2009.

**Editor's notes.** — Application of Law 11-179: Section 3 of D.C. Law 11-179 provided that the act shall be applicable 120 days from the effective date of the act. D.C. Law 11-179 became effective on April 9, 1997.

## CASE NOTES

### ANALYSIS

Custodians.  
Discretion of court.  
Due process of law.  
Fundamental fairness.  
Grounds for detention, generally.  
Parens patriae.  
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### Custodians.

Social worker was not a “custodian” in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker’s custody pending detention hearing was void and could be disobeyed, with impunity and social worker’s refusal to comply with order was not punishable as contempt. D.C.C.E §§ 16-2301(12, 21), 16-2310, 16-2312, 16-2312(d)(2)(A); D.C. Code SCR, Juvenile Rule 42(a). In re Banks, 306 A.2d 270, 1973 D.C. App. LEXIS 307 (1973).

### Discretion of court.

The family division has considerable discretion in determining whether to order an ac-

cused juvenile detained pending fact-finding hearing. D.C. Code §§ 16-2310, 16-2312(d). In re R.D.S., 359 A.2d 136, 1976 D.C. App. LEXIS 291 (1976).

### Due process of law.

Plaintiff’s §§ 1983 action against District of Columbia, alleging that his placement in a youth shelter, before receiving either a factfinding hearing or a dispositional hearing in a juvenile delinquency proceeding, deprived him of procedural due process, could not be dismissed on a motion for failure to state a claim; the litigation was at an early stage, such that the factual underpinnings of juvenile’s legal claims were not yet clear and the parties had addressed in only a cursory manner the potentially complex legal issues raised by the complaint. Doe v. District of Columbia, 706 F.Supp.2d 128, 2010 U.S. Dist. LEXIS 38230 (2010).

Pretrial detention of juvenile in secure juvenile facility for 213 days did not violate due process; illness of juvenile’s attorney resulted in alteration of earlier trial date, reduced number of judges were available to try cases during summer months, juvenile sought relief from

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detention approximately one month prior to second trial date, and it was unlikely that decision of unconstitutionality would lead to juvenile's release, given filing of additional charges against juvenile for threats to do bodily harm to counselor during detention. D.C. Code 1981, §§ 16-2310, 22-507; Juvenile Rule 50; U.S. Const. Amend. 14. In re K.H., 647 A.2d 61, 1994 D.C. App. LEXIS 148 (1994).

### **Fundamental fairness.**

In view of precautionary measures required before filing of delinquency petition, including inquiry by corporation counsel as to facts and law, fact that no probable cause hearing is required when juvenile is not ordered detained does not violate standard of fundamental fairness. D.C. Code §§ 16-2304(a), 16-2305(a-d), 16-2308, 16-2310, 16-2312(e, f). M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

### **Grounds for detention, generally.**

Mere finding that order detaining juvenile to protect person of others is necessary solely because of "nature and circumstances of pending charge," standing alone, would not constitute sufficient grounds for detention. D.C. Code SCR, Juvenile Rule 106(a)(1); D.C. Code §§ 16-2310(a)(1), 16-2312(d)(1)(A). In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

It was constitutionally permissible to detain a juvenile with no prior record given the nature and circumstances of the charge against him. In re M.R., 117 WLR 1121 (Super. Ct. 1989).

### **Parens patriae.**

Court's *parens patriae* role in neglect proceeding comes into play before adjudication of neglect, even though corporation counsel also

has *parens patriae* responsibilities. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Probable cause.**

Absent finding of probable cause to believe that allegations in pending petition were true, trial court erred in ordering juvenile awaiting trial on delinquency charge detained based on finding that juvenile violated conditions of pre-trial release. D.C. Code 1981, § 16-2312(e); Juvenile Rule 107(c). In re S.J., 686 A.2d 1024, 1996 D.C. App. LEXIS 298 (1996).

Trial court was without authority to order detention of juvenile awaiting trial on delinquency charge from a Thursday to the following Tuesday, based on finding the juvenile had violated conditions of his pretrial release, without finding there was probable cause to believe the allegations in the pending petition were true; in so holding, the Court of Appeals expressed no view whether the court would be authorized to order the detention of a juvenile for a shorter period, or whether some substitute for a probable cause evidentiary hearing such as an affidavit would suffice. D.C. Code 1981, § 16-2312(e); Juvenile Rule 107(c). In re S.J., 686 A.2d 1024, 1996 D.C. App. LEXIS 298 (1996).

### **Protection of public.**

Protection of public from crime is appropriate consideration in determining whether and for how long a period judge may keep behind bars a juvenile who has been found guilty, on his plea, of serious armed offenses. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

## § 16-2310.01. Separation of young children detained prior to a hearing.

The Director of the Department of Human Services and the Director of Social Services shall ensure that each child at risk who is detained, however briefly, pursuant to section 16-2311(a)(2) or (b)(1) shall be physically separated at all times, except during transportation, from children or other detainees 13 years of age or older, from any child under the age of 13 who has been detained on the ground that there is probable cause to believe the child has committed a crime of violence, as defined in section 23-1331(4), or in any other manner deemed to ensure the safety of the child. Neither the Department of Human Services nor the Director of Social Services shall deliver a child under the age of 13 to the custody of the United States Marshals Service. For the purposes of this section, "child at risk" means a child under the age of 13 or any child 13 years of age or older who, because of his or her size or physical stature, is determined to be especially physically or psychologically vulnerable to attacks by other children.



(Aug. 13, 1986, D.C. Law 6-140, § 2(c), 33 DCR 3827.)

**Prior Codifications.** — 1981 Ed., § 16-2310.1.

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 2(c) of the Juvenile Speedy Trial Equity Temporary Act of 2008 (D.C. Law 17-139, March 26, 2008, law notification 55 DCR 4470).

**Emergency legislation.** — For temporary (90 day) addition, see § 2(c) of Juvenile Speedy Trial Equity Emergency Act of 2007 (D.C. Act 17-235, December 27, 2007, 55 DCR 240).

For temporary (90 day) addition, see § 2(c) of Juvenile Speedy Trial Equity Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-315, March 19, 2008, 55 DCR 3408).

**Legislative history of Law 6-140.** — Law 6-140, the “Juvenile Protective Act of 1986,” was introduced in Council and assigned Bill No. 6-250, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-178 and transmitted to both Houses of Congress for its review.

**Editor’s notes.** — Section 28(c)(2) of D.C. Law 15-354 provided that the section designation of § 16-2310.1 of the District of Columbia Official Code is redesignated as § 16-2310.01.

## § 16-2311. Release or delivery to Family Division [Family Court].

(a) A person taking a child into custody shall with all reasonable speed —

(1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division, unless the child’s placement in detention or shelter care appears required as provided in section 16-2310;

(2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or

(3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Director of the Agency, or the Superior Court of the District of Columbia; or

(4) bring a child alleged to be a neglected child to the Director of the Agency.

Any person taking a child into custody shall give prompt notice to the Corporation Counsel and to the parent, guardian, or custodian (if known) together with the reasons for custody.

(b)(1) When a child is brought before the Director of Social Services, the Director shall in all cases review the need for detention or shelter care prior to the admission of the child to the place of detention or shelter care. The child shall be released to his parent, guardian, or custodian unless the Director of Social Services finds that detention or shelter care is required under section 16-2310. If the child is not released, the Director of Social Services shall advise the child of the right to counsel as provided in section 16-2304, and if the child is under the age of 13, shall immediately deliver the child to the custody of the Director of the Department of Human Services. Under no circumstances shall the Director of Social Services deliver a child under the age of 13 to the custody of the United States Marshals Service.

(2) when a child is brought before the Director of the Agency, the Director shall review the need for shelter care prior to the admission to shelter care. If

shelter care is required the Director shall select the most appropriate placement for the child. If the Director determines that shelter care is not required the Director may recommend to the Metropolitan Police Department of the District of Columbia the release of the child to his or her parent, guardian or custodian. When a child is being held in a hospital the case shall be reviewed by the Director. If the Director determines that shelter care is not required, he or she shall recommend to said Police the release of the child to his or her parent, guardian, or custodian. If the Director determines there is a need for shelter care but there is not a medical need requiring hospitalization, the Director shall secure the appropriate shelter care.

(c) If a parent, guardian, or custodian fails, when requested, to bring the child to the Division as provided in subsection (a)(1), the Division may issue a warrant directing that the child be taken into custody and brought before the Division.

(d) A person taking a child into custody or a public agency having temporary care pending a detention or shelter care hearing may bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical, psychiatric, or evidentiary purposes and may authorize such diagnosis or emergency treatment. Routine medical treatment shall not be authorized unless a parent cannot be consulted.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 530, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(d), 24 DCR 3341; Aug. 13, 1986, D.C. Law 6-140, § 2(b), 33 DCR 3827; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(5), 48 DCR 2043.)

**Cross references.** — Child abuse and neglect, removal of child from home, alternative placements, see § 4-130

**Prior Codifications.** — 1981 Ed., § 16-2311.

1973 Ed., § 16-2311.

**Effect of amendments.** — D.C. Law 13-277 substituted "Director of the Agency" for "Chief of the Child Protective Services Division of the Department of Human Services" throughout the section.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 6-140.** — For legislative history of D.C. Law 6-140, see Historical and Statutory Notes following § 16-2310.01.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Confessions.  
Reasonable speed.  
Waiver of right to prompt presentment.

### Confessions.

Juvenile's confession properly obtained within three hours of arrest was not retroactively vitiated by subsequent failure to take him promptly to the director of social services as required by statute. D.C. Code § 16-2311. In

re F.D.P., 352 A.2d 378, 1976 D.C. App. LEXIS 472 (1976).

### Reasonable speed.

Officers did not violate statute requiring that arrested youth be released to his family or brought before director of social services after arrest, where police had not yet reached point in processing of youth at which that determination had to be made and youth was held only for several hours and officers did not fail to return him to his family "with all reasonable



speed." D.C. Code § 16-2311. *Jackson v. District of Columbia*, 412 A.2d 948, 1980 D.C. App. LEXIS 249 (1980).

**Waiver of right to prompt presentment.**

Juvenile's waiver of his rights to counsel and to refrain from self-incrimination, coupled with his agreeing to discuss offense and make a

statement, constituted a temporary waiver of his right to prompt presentment before director of social services, and confession rendered within three hours was not rendered invalid. D.C. Code § 16-2311; D.C. Code SCR, Criminal Rule 5(a); Fed.Rules Crim.Proc. rule 5(a), 18 U.S.C.; 18 U.S.C. § 5035. *In re F.D.P.*, 352 A.2d 378, 1976 D.C. App. LEXIS 472 (1976).

## § 16-2311.01. Rules.

The Mayor shall issue rules to implement the provisions of section 16-2309(b), section 16-2310.01, section 16-2311(b)(1), and section 16-2311.01 within 90 days from August 13, 1986. These rules shall be submitted for a 30-day period of review by the Council of the District of Columbia, excluding Saturdays, Sundays, holidays, and days that pass during Council recess.

(Aug. 13, 1986, D.C. Law 6-140, § 2(e), 33 DCR 3827.)

**Prior Codifications.** — 1981 Ed., § 16-2311.1.

**Legislative history of Law 6-140.** — For legislative history of D.C. Law 6-140, see Historical and Statutory Notes following § 16-2310.01.

**Delegation of Authority.** — Delegation of

authority pursuant to Law 6-140, see Mayor's Order 86-192, October 27, 1986.

**Editor's notes.** — Section 28(c)(3) of D.C. Law 15-354 provided that the section designation of § 16-2311.1 of the District of Columbia Official Code is redesignated as § 16-2311.01.

## § 16-2312. Detention or shelter care hearing; intermediate disposition.

(a)(1) When a child is not released as provided in section 16-2311 and the child is alleged to be abused or neglected:

(A) A guardian ad litem shall be appointed to represent the child's best interest within 24 hours (excluding Sundays) of the child having been taken into custody;

(B) A shelter care hearing shall be commenced not later than 72 hours (excluding Sundays) after the child has been taken into custody; and

(C) A petition shall be filed at or prior to the shelter care hearing.

(2) When a child is not released as provided in section 16-2311 and the child is alleged to be delinquent or a child in need of supervision:

(A) A detention hearing shall be commenced not later than the next day (excluding Sundays) after the child has been taken into custody or transferred from another court as provided by section 16-2302; and

(B) A petition shall be filed at or prior to the detention hearing.

(a-1)(1) During the 72-hour period authorized in subsection (a)(1) of this section, the Agency may convene a family team meeting to solicit the input of family members, relatives, and others concerned with the welfare of the child to develop a safety plan approved by the Agency. At a minimum, the Agency shall invite parents, relatives, caregivers, community representatives, service providers, and the guardian ad litem appointed to represent the child's best interest to attend a family team meeting.

(2) The Agency shall summarize the discussion from a family team

meeting and record the safety plan approved by the Agency in the appropriate electronic database, and distribute a copy of the plan to all participants of the family team meeting. The safety plan shall clearly outline the roles and responsibilities of each participant and the target dates for each action set forth in the plan.

(b) Prompt notice of the detention or shelter care hearing shall be given, if delinquency or need of supervision is alleged, to the child, and to his spouse (if any), parent, guardian, or custodian, if he can be found, or, if neglect is alleged, to the child, and to the parent, guardian, or custodian named in the petition if he can be found. Counsel for the child, and in neglect cases counsel for the parent, guardian, or custodian, shall be entitled to a copy of the petition prior to the hearing.

(c) At the commencement of the hearing the judge shall advise the parties of the right to counsel, as provided in section 16-2304, and shall appoint counsel if required. He shall also inform them of the contents of the petition and shall afford the child, or in a neglect case, the parent, guardian, or custodian, an opportunity to admit or deny the allegations in the petition. He shall then hear from the Corporation Counsel to determine whether the child should be placed or continued in detention or shelter care under the criteria in section 16-2310. The child and his parent, guardian, or custodian shall have a right to be heard in their own behalf.

(d)(1) At the conclusion of the hearing, the judge shall —

(A) order detention or shelter care, setting forth in writing his reasons therefor, if he finds that the child's detention or shelter care is required under the criteria in section 16-2310; or

(B) order the child released if he finds that the child's detention or shelter care is not required under such criteria.

(2) If a child is ordered released under paragraph (1)(B) of this subsection, the judge may impose one or more of the following conditions:

(A) Placement of the child in the custody of a parent, guardian, or custodian or under supervision of a person or organization agreeing to supervise him.

(B) Placement of restrictions on the child's travel, activities, or place of abode during the period of release.

(C) Any other condition reasonably necessary to assure the appearance of the child at a factfinding hearing or his protection from harm, including a requirement that the child return to the physical custody of the parent, guardian, or custodian after specified hours.

(3) If neglect is alleged, an order of shelter care under this subsection shall include a determination of whether:

(A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, a determination that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and

(B) Continuation of the child in the child's home would be contrary to the welfare of the child.

(e) When a judge finds that a child's detention or shelter care is required under the criteria of section 16-2310, he shall then hear evidence presented by



the Corporation Counsel to determine whether there is probable cause to believe the allegations in the petition are true. The child, his parent, guardian or custodian may present evidence on the issues and be heard in their own behalf.

(f) When a judge finds there is probable cause to believe the allegations in the petition are true, he shall order the child to be placed or continued in detention or shelter care and set forth his reasons. When a judge finds that there is not probable cause to believe the allegations in the petition are true, he shall order the child to be released.

(g) The Division at a detention or shelter care hearing may not postpone the determination of whether detention or shelter care is required. For good cause shown, however, the Division may grant a continuance of any other part of the hearing (including the filing of a petition) for a period not to exceed five days.

(h) On motion by or on behalf of the child, a child in custody shall be released from custody if his detention or shelter care hearing is not commenced within the time set herein.

(i) If a child is not released after his detention or shelter care hearing and the parent, guardian or custodian did not receive notice thereof, the Division may, in the interest of justice, conduct a new hearing in accordance with rules prescribed by the Superior Court.

(j) Upon objection of the child or his parent, guardian or custodian, a judge who conducted a detention or shelter care hearing shall not conduct a factfinding hearing on the petition.

(k) A presumption shall exist that a child will attend the same school that he or she would have attended but for the child's entry into shelter care, unless it is determined that it is not in the child's best interest to do so.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 530, Pub. L. 91-358, title I, § 121(a); June 27, 2000, D.C. Law 13-136, § 301(c), 47 DCR 2850; Apr. 12, 2005, D.C. Law 15-341, § 5(a), 52 DCR 2315; Mar. 12, 2011, D.C. Law 18-312, § 3,)

**Prior Codifications.** — 1981 Ed., § 16-2312.

1973 Ed., § 160-2312.

**Effect of amendments.** — D.C. Law 13-136 added par. (3) of subsec. (d).

D.C. Law 15-341 rewrote subsec. (a) and added subsec. (a-1).

D.C. Law 18-312 adds subsec. (k).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(c) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 301(c) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(c) of the Adoption and Safe

Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(c) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 2(a) of Child in Need of Protection Emergency Act of 2004 (D.C. Act 15-724, January 19, 2005, 52 DCR 1945).

For temporary (90 day) addition of section, see § 2(b) of Child in Need of Protection Emergency Act of 2004 (D.C. Act 15-724, January 19, 2005, 52 DCR 1945).

For temporary (90 day) amendment of section, see § 2 of Juvenile Arraignments on Inauguration Day Emergency Act of 2008 (D.C. Act 17-643, January 5, 2009, 56 DCR 680).

**Legislative history of Law 13-136.** — For Law 13-136, see notes following § 16-2301.

**Legislative history of Law 15-341.** — Law 15-341, the “Child in Need of Protection Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-389 which was referred to the Committee on Judiciary and the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-758 and transmitted to both Houses of Congress for its review. D.C. Law 15-341 became effective on April 12, 2005.

**Legislative history of Law 18-312.** — Law 18-312, the “Prevention of Child Abuse and Neglect Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-579, which was referred to the Committee on Human Services, Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 13, 2010, it was assigned Act No. 18-633 and transmitted to both Houses of Congress for its review. D.C. Law 18-312 became effective on March 12,

## CASE NOTES

### ANALYSIS

Continuance to file petition.  
Custodians.  
Discretion of court.  
Disqualification of judge.  
Fundamental fairness.  
Jurisdiction.  
Parens patriae.  
Presumptions and burden of proof.  
Review.  
Sufficiency of findings.  
Validity.  
Validity of detention.

### Continuance to file petition.

Providing juvenile's counsel with a copy of complaint setting forth important information relevant to case and identifying charge as assault with intent to kill while armed was sufficient to provide juvenile with de facto notice of charge and, as such, comported with due process so as to authorize the family division of the superior court to postpone the filing of the delinquency petition and to order the juvenile detained. D.C. Code 1981, § 16-2312(a-g); U.S. Const. Amend. 14. In re T.G.T., 515 A.2d 1086, 1986 D.C. App. LEXIS 439 (1986).

Government's stated interest in seeking to postpone a filing of delinquency petition, a desire to interview hospitalized complainant before drafting charging papers in case, was sufficient to permit the family division of the superior court to postpone the filing of the petition and to detain the juvenile without a petition as long as de facto notice of charge was given. D.C. Code 1981, § 16-2312(a-g); U.S.C. Const. Amend. 14. In re T.G.T., 515 A.2d 1086, 1986 D.C. App. LEXIS 439 (1986).

### Custodians.

Social worker was not a “custodian” in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's

custody pending detention hearing was void and could be disobeyed, with impunity and social worker's refusal to comply with order was not punishable as contempt. D.C.C.E §§ 16-2301(12, 21), 16-2310, 16-2312, 16-2312(d)(2)(A); D.C. Code SCR, Juvenile Rule 42(a). In re Banks, 306 A.2d 270, 1973 D.C. App. LEXIS 307 (1973).

### Discretion of court.

Trial judge's decision in juvenile delinquency case to enter, prior to reviewing an individualized education program, a disposition that ordered residential placement at hospital was not an abuse of discretion or otherwise improper, as neither the juvenile justice laws nor the IDEA required such a review. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

The family division of the superior court may permit the government to postpone the filing of a juvenile delinquency petition for up to five days and, at the same time, order detention for shelter care provided the government makes a clear showing of a legitimate state objective to be served by the postponement and the juvenile is given reasonably specific notice of the nature of the charge. D.C. Code 1981, § 16-2312(a-g). In re T.G.T., 515 A.2d 1086, 1986 D.C. App. LEXIS 439 (1986).

The family division has considerable discretion in determining whether to order an accused juvenile detained pending fact-finding hearing. D.C. Code §§ 16-2310, 16-2312(d). In re R.D.S., 359 A.2d 136, 1976 D.C. App. LEXIS 291 (1976).

### Disqualification of judge.

Trial judge was not required to recuse herself from delinquency proceeding because she had conducted a detention or shelter care hearing in the case; juvenile rejected the alternative of letting another judge decide the issue of probable cause justifying overnight detention, and the judge's only exposure to facts about the charges that formed the basis of the delin-



quency complaint was with the consent of counsel for juvenile. In re L.M., 5 A.3d 18, 2010 D.C. App. LEXIS 553 (2010).

Statute providing that, upon objection of child or his parent, a judge who conducted detention hearing shall not conduct a fact-finding hearing on petition operates to assure that judge who must make ultimate finding of guilty or not guilty is not predisposed toward guilt by having been exposed to testimony which may not be offered or may be inadmissible in fact-finding hearing. D.C. Code § 16-2312(j). In re W.N.W., 343 A.2d 55, 1975 D.C. App. LEXIS 223 (1975).

Statute providing that, upon objection, a judge who conducted detention hearing shall not conduct a fact-finding hearing on petition applies only to hearing on same petition before same judge. D.C. Code § 16-2312(j). In re W.N.W., 343 A.2d 55, 1975 D.C. App. LEXIS 223 (1975).

Statute providing that, upon objection, a judge who conducted a detention hearing shall not conduct a fact-finding hearing on petition did not require that judge who presided over detention hearing on sodomy charge against 17-year-old defendant recuse himself from subsequent fact-finding hearing on assault charge against defendant. D.C. Code §§ 16-2312(j), 22-504. In re W.N.W., 343 A.2d 55, 1975 D.C. App. LEXIS 223 (1975).

Statute providing that, upon objection of child or his parent, a judge who conducted detention hearing shall not conduct a fact-finding hearing on petition makes disqualification of judge dependent upon the making of an objection and does not mandate automatic recusation. D.C. Code § 16-2312(j). In re W.N.W., 343 A.2d 55, 1975 D.C. App. LEXIS 223 (1975).

Where neither juvenile nor his attorney, both of whom had been present at pretrial detention hearing, requested trial judge to recuse himself, trial judge did not err in failing to recuse himself even though he had conducted the fact-finding hearing on the petition. D.C. Code § 16-2312(j). In re V.L.M., 340 A.2d 818, 1975 D.C. App. LEXIS 404 (1975).

### **Fundamental fairness.**

In view of precautionary measures required before filing of delinquency petition, including inquiry by corporation counsel as to facts and law, fact that no probable cause hearing is required when juvenile is not ordered detained does not violate standard of fundamental fairness. D.C. Code §§ 16-2304(a), 16-2305(a-d), 16-2308, 16-2310, 16-2312(e, f). M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

### **Jurisdiction.**

Jurisdiction of the Juvenile Court is comprehensive and is to be taken as attaching at the

earliest stage necessary to implement the broad rehabilitative purposes of the law. D.C. Code §§ 11-1584, 16-2312, 16-2316(3); D.C. Code 1961, § 24-106. *Creek v. Stone*, 379 F.2d 106, 1967 U.S. App. LEXIS 6580 (C.A.D.C. 1967).

Juvenile Court has jurisdiction to enter order concerning child in its custody pendente lite, pending the disposition on the merits. D.C. Code §§ 11-1584, 16-2312, 16-2316(3). *Creek v. Stone*, 379 F.2d 106, 1967 U.S. App. LEXIS 6580 (C.A.D.C. 1967).

### **Parens patriae.**

Juvenile court legislation rests, in various aspects, on premise that state is acting as *parens patriae*, that it is undertaking in effect to provide for child the kind of environment he should have been receiving at home, and that it is because of this that appropriate officials, while subject to requirement that juvenile proceedings must not be arbitrary or unfair, are permitted to take and retain custody of child without affording him all various procedural rights available to adults suspected of crime. D.C. Code §§ 11-1551(a)(1) (F, G), 11-1584, 16-2312, 16-2316(3); D.C. Code 1961, § 24-106. *Creek v. Stone*, 379 F.2d 106, 1967 U.S. App. LEXIS 6580 (C.A.D.C. 1967).

Court's *parens patriae* role in neglect proceeding comes into play before adjudication of neglect, even though corporation counsel also has *parens patriae* responsibilities. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

*Parens patriae* role allows court with jurisdiction of neglect case to provide relief necessary to protect best interests of child. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Presumptions and burden of proof.**

Juvenile seeking summary reversal of order detaining him pending trial on charges of carnal knowledge and assault had burden of demonstrating that merits of claim so clearly warranted relief as to justify expedited action. D.C. Code §§ 16-2312(d), 16-2327, 22-504, 22-2801. In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

### **Review.**

Expedited procedure for appeal of denial of juvenile detainee's challenge to pretrial detention order did not apply to motion to reconsider order of detention; expedited procedure only applied to original order of detention, given that contrary reading would allow detainee to

press court into quasi-emergency service any time detainee requested and was denied reconsideration of original order. D.C. Code 1981, §§ 16-2312, 16-2328; Juvenile Rule 107(d). In re K.H., 647 A.2d 61, 1994 D.C. App. LEXIS 148 (1994).

Where juvenile did not object to fact that same trial judge presided at his detention-probable cause hearing as well as his suppression hearing and fact-finding hearing, he was precluded from asserting such issue as error on appeal. D.C. Code § 16-2312(j); D.C. Code SCR, Juvenile Rules 12(b)(1, 2), 51. In re W., 370 A.2d 1333, 1977 D.C. App. LEXIS 430 (1977).

#### **Sufficiency of findings.**

Absent finding of probable cause to believe that allegations in pending petition were true, trial court erred in ordering juvenile awaiting trial on delinquency charge detained based on finding that juvenile violated conditions of pretrial release. D.C. Code 1981, § 16-2312(e); Juvenile Rule 107(c). In re S.J., 686 A.2d 1024, 1996 D.C. App. LEXIS 298 (1996).

Trial court was without authority to order detention of juvenile awaiting trial on delinquency charge from a Thursday to the following Tuesday, based on finding the juvenile had violated conditions of his pretrial release, without finding there was probable cause to believe the allegations in the pending petition were true; in so holding, the Court of Appeals expressed no view whether the court would be authorized to order the detention of a juvenile for a shorter period, or whether some substitute for a probable cause evidentiary hearing such as an affidavit would suffice. D.C. Code 1981, § 16-2312(e); Juvenile Rule 107(c). In re S.J., 686 A.2d 1024, 1996 D.C. App. LEXIS 298 (1996).

Reasons for entry of detention order phrased in statutory language which are ultimate conclusions are insufficient. D.C. Code Court of Appeals Rules, rule 9(a)(2), (c)(2); D.C. Code § 16-2312(d). In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by court in answering order, case would be remanded to superior court with directions that judge file statements of reasons for order or reconsider same. D.C. Code Court of Appeals Rules, rule 9(a)(2), (c)(2); D.C. Code § 16-2312(d); D.C. Code SCR, Juvenile Rule 106(a)(1). In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

Mere finding that order detaining juvenile to protect person of others is necessary solely because of "nature and circumstances of pending charge," standing alone, would not constitute sufficient grounds for detention. D.C. Code SCR, Juvenile Rule 106(a)(1); D.C. Code §§ 16-2310(a)(1), 16-2312(d)(1)(A). In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

#### **Validity.**

Statute authorizing the family division of the superior court to order a continuance of a hearing on a juvenile delinquency petition for a period not to exceed five days comports with due process if read to require that the government make a clear showing of a legitimate state objective to be served by the postponement and that the juvenile be given reasonably specific notice of the nature of the charge. D.C. Code 1981, § 16-2312(a-g); U.S. Const. Amend. 14. In re T.G.T., 515 A.2d 1086, 1986 D.C. App. LEXIS 439 (1986).

#### **Validity of detention.**

Proceedings in Family Court, by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

It was constitutionally permissible to detain a juvenile with no prior record given the nature and circumstances of the charge against him. In re M.R., 117 WLR 1121 (Super. Ct. 1989).

### **§ 16-2312a. Evaluation of family team meetings and 72-hour time period for commencement of shelter care hearing.**

At intervals no later than 6 months, 18 months, and 30 months after [April 12, 2005], the Agency shall commission an independent process and impact evaluation of the family team meetings authorized in section 16-2312(a-1) and the 72-hour period authorized in section 16-2312(a)(1). Each evaluation shall, at a minimum, assess the following processes and outcomes of the family team meetings:

(1) Rates of participation in the meetings for different types of participants, including parents, children, and relatives;



(2) Demographic information about children and families who participated in the meetings;

(3) The percentage of meetings resulting in approved safety plans;

(4) The supports and services included in approved safety plans;

(5) The extent to which supports and services included in approved safety plans actually were provided;

(6) The percentage of meetings that resulted in the filing of a petition in the Family Court to remove a child from the home, and the percentage of meetings that resulted in a decision not to file a petition in Family Court;

(7) The placement outcomes for children who were the subject of the meetings, including:

(A) The percentage of children living with parents;

(B) The percentage of children living with relatives;

(C) The percentage of children who have been adopted;

(D) The percentage of children living in foster care; and

(E) Other applicable placements;

(8) The percentage of children who received a permanent placement and whose cases were closed;

(9) The percentage of children who were the subject of subsequent reports to the Agency's abuse and neglect reporting line; and

(10) The effect of the 72-hour time frame for the commencement of a Family Court hearing on families' legal protections and due-process rights.

(Apr. 12, 2005, D.C. Law 15-341, § 5(a), 52 DCR 2315.)

**Legislative history of Law 15-341.** — For Law 15-341, see notes following § 16-2312.

## § 16-2313. Place of detention or shelter.

(a) A child who is alleged to be neglected and who is in custody may be placed at any time prior to disposition, only in —

(1) a foster home;

(2) a group home, youth shelter, or other appropriate home for nondelinquent children; or

(3) another facility for shelter care designated by the Division, including an appropriate facility operated by the District of Columbia.

No child alleged to be neglected may be placed in a facility described in paragraph (3) of subsection (b) of this section.

(b) A child who is alleged to be in need of supervision or (except as provided in subsection (d) or (e)) is alleged to be delinquent and who is in custody may be detained at any time prior to disposition only in —

(1) a foster home;

(2) a group home, youth shelter, or other appropriate home for allegedly delinquent children; or

(3) a detention home for allegedly delinquent children or children alleged to be in need of supervision, designated by the Division, including an appropriate facility operated by the District of Columbia.

Unless the Division shall by order so authorize, no child may be detained in a

facility described in paragraph (3) if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the Division.

(c) A child in detention or shelter care may be temporarily transferred to a medical facility for physical care and may, on order of the Division, be temporarily transferred to a facility for mental examination or treatment.

(d) Except as provided in subsection (e), no child under eighteen years of age may be detained in a jail or other facility for the detention of adults, unless transferred as provided in section 16-2307. The appropriate official of a jail or other facility for the detention of adults shall inform the Superior Court immediately when a child under the age of eighteen years is received there (other than by transfer) and shall (1) deliver him to the Director of Social Services upon request, or (2) transfer him to a detention facility described in subsection (b)(3).

(e) A child sixteen years of age or older who is alleged to be delinquent and who is in detention, whose conduct constitutes a menace to other children, and who cannot be controlled, may on order of the Division be transferred to a place of detention for adults, but shall be kept separate from adults.

(f) The department or agency having custody, pursuant to a shelter care order, of a child alleged to be a neglected child shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent, if any, at least forty-eight (48) hours prior to the change in placement, except that in the case of an emergency, notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice need not be given to the parent where the Division has found that visitation would be detrimental to the child or the Division has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection, the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child, except that the department or agency need not conduct such a hearing if the requestor does not qualify as a party pursuant to D.C. Official Code, section 16-2304.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 531, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 404, 24 DCR 3341.)

**Cross references.** — Agency authorization of medical treatment, physical custody of child, see § 4-1303.05.

**Prior Codifications.** — 1981 Ed., § 16-2313.

1973 Ed., § 16-2313.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Children in need of supervision.  
Delinquent children.  
Neglected children.

### Review.

### Children in need of supervision.

Statute precludes placement of a child adjudicated to be a child in need of supervision



(CINS) in a facility for delinquent children unless there has been a second CINS adjudication. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Trial court's order for temporary detention of child adjudicated in need of supervision (CINS) at detention facility was not reversible error, even though facility contained delinquent youths, and statute does not permit placement of CINS children in a facility for delinquent children, since facility was not a facility maintained for adjudicated and committed delinquent youths, although due to judicial orders, half of the population was in that status on date of hearing; rather, receiving home was a facility designed, and generally used for detained youth prior to trial, and court's order imposed strict conditions for separation of child from any delinquents held at facility. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

#### **Delinquent children.**

Trial judge's decision in juvenile delinquency case to enter, prior to reviewing an individualized education program, a disposition that ordered residential placement at hospital was not an abuse of discretion or otherwise improper, as neither the juvenile justice laws nor the IDEA required such a review. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Statute which prohibits commitment of child found to be juvenile delinquent to penal or

correctional institution for adult offenders does not preclude a commitment to juvenile facility of person previously held in adult facility who was found to be "child" for purpose of juvenile delinquency proceedings. D.C. Code 1981, §§ 16-2301, 16-2302(c), 16-2313(d, e), 16-2320(e); Criminal Rule 52. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

A court may not designate a facility as an appropriate detention home for placement of children pursuant to subsection (b)(3). In re Savoy, 113 WLR 553 (Super. Ct. 1985).

#### **Neglected children.**

Neglected children, who had been placed under shelter care, had been placed in "court-ordered custody," as required for termination of mother's parental rights. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

#### **Review.**

Appeal challenging temporary placement of child in need of supervision (CINS) in detention facility, on ground that statute prohibited placement of children adjudicated in need of supervision in a facility for delinquents, was not rendered moot by child's subsequent placement in group home, considering that limited time that child remains in detention facility while awaiting placement in a foster home or an institution prevents full litigation of issue before cessation of challenged action. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

## **§ 16-2314. Consent decree.**

(a) At any time after the filing of a delinquency or need of supervision petition and prior to adjudication at a factfinding hearing, the Division may, on motion of the Corporation Counsel or counsel for the child, suspend the proceedings and continue the child under supervision, without commitment, under terms and conditions established by rules of the Superior Court. Such a consent decree shall not be entered unless the child is represented by counsel and has been informed of the consequences of the decree; nor shall it be entered over the objection of the child or of the Corporation Counsel.

(b) A consent decree shall remain in force for six months unless the child is sooner discharged by the Director of Social Services. Upon application of the Director of Social Services or an agency supervising the child made prior to the expiration of the decree, a consent decree may, after notice and hearing, be extended for not more than six additional months by order of the Division.

(c) If prior to the expiration of the decree or discharge by the Director of Social Services, the child fails to fulfill the express conditions of the decree or a new delinquency or need of supervision petition is filed concerning the child, the original petition under which the decree was filed may, in the discretion of the Corporation Counsel following consultation with the Director of Social

Services, be reinstated. The child shall thereafter be held accountable on the original petition as if the consent decree had never been entered.

(d) If a child completes the period of continuance under supervision in accordance with the consent decree or is sooner discharged by the Director of Social Services, the Division shall dismiss the original petition.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 532, Pub. L. 91-358, title I, § 121(a).)

**Prior Codifications.** — 1981 Ed., § 16-2314. 1973 Ed., § 16-2314.

## CASE NOTES

### ANALYSIS

Dismissal of petition.

Due process.

Judicial discretion.

Rescission of consent decree.

Sufficiency of findings.

### Dismissal of petition.

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. D.C. Code SCR, Juvenile Rule 48(b); D.C. Code §§ 16-2314, 16-2316(a), 16-2317(b). In re R., 310 A.2d 226, 1973 D.C. App. LEXIS 369 (1973).

### Due process.

By executing consent decree subsequent to a petition that he was in need of care and rehabilitation, juvenile had a legitimate expectation that he would lose benefits bestowed by decree only if it were determined that a new petition was filed against him or that he breached the decree conditions, and thus rescission of consent decree and reinstatement of underlying petition implicated a liberty interest protected by the due process clause of the Fifth Amendment; once this liberty interest, properly conditioned on fulfillment of terms of the decree, was granted to juvenile, due process protections attached to any decision of the Corporation Counsel to revoke the decree under which the grant was made. U.S. Const.Amend. 5; D.C. Code 1981, § 16-2314(c). In re C.Y., 466 A.2d 421, 1983 D.C. App. LEXIS 481 (1983).

Juvenile's liberty interest flowing from consent decree subsequent to a petition to find him in need of care and rehabilitation was adequately protected by statutorily enunciated procedures for reinstatement of original peti-

tion based upon a filing of new petition against the juvenile. U.S. Const.Amend. 5; D.C. Code 1981, §§ 16-2305(b), 16-2314(c). In re C.Y., 466 A.2d 421, 1983 D.C. App. LEXIS 481 (1983).

### Judicial discretion.

Trial court, acting within its sound judicial discretion, has the power under Juvenile Court Rule to dismiss for social reasons delinquency petition filed against a juvenile, when such action is in the interests of justice and the welfare of the child; and such dismissal is subject to review only for abuse of discretion; however, upon request of the corporation counsel, the court must set forth its reasons for the dismissal. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

Where, in a delinquency proceeding, it becomes clear to judge during fact-finding hearing that the continuation of such proceeding is not in the best interests of either justice or the individual child, it should be within his power to terminate the proceedings; further, the fact that the corporation counsel must participate in all juvenile cases does not change this result, nor does the availability of a consent decree take the place of a judicial dismissal. D.C. Code SCR, Juvenile Rule 48(b); District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. In re M. C. F., 293 A.2d 874, 1972 D.C. App. LEXIS 236 (1972).

At a delinquency hearing, trial court has the power to close the case without a finding for social reasons. D.C. Code SCR, Juvenile Rule 48(b); District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. In re M. C. F., 293 A.2d 874, 1972 D.C. App. LEXIS 236 (1972).

### Rescission of consent decree.

By statute, decision to rescind a consent decree entered upon a petition that a juvenile is in need of care and rehabilitation is discretionary with the Corporation Counsel. D.C. Code 1981, § 16-2314(c). In re C.Y., 466 A.2d 421, 1983 D.C. App. LEXIS 481 (1983).



Rescission of a consent decree on a petition that a juvenile is in need of care and rehabilitation and the reinstatement of the underlying petition are qualitatively and quantitatively different from revocation of parole or probation. D.C. Code 1981, § 16-2314(c). In re C.Y., 466 A.2d 421, 1983 D.C. App. LEXIS 481 (1983).

**Sufficiency of findings.**

Superior court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon re-

quest of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

**§ 16-2315. Physical and mental examinations.**

(a)(1) At any time following the filing of a petition, on motion of the Corporation Counsel or counsel for the child, or on its own motion, the Division may order a child to be examined to aid in determining his physical or mental condition.

(2) An order for examination under this subsection shall include:

(A) A copy of the petition;

(B) The names and addresses of the attorney for the District of Columbia and the attorney for the respondent; and

(C) A summary of the reasons for the examination request.

(3) The court may issue such orders as may be necessary to procure any available mental health and educational records and other information that is deemed relevant for purposes of the examination.

(b)(1) Wherever possible a physical or mental health examination shall be conducted on an outpatient basis, but the Division may, if it deems necessary, order the child admitted as an inpatient to a suitable medical facility for the purpose of examination.

(2) The Division may order a child admitted as an inpatient to a suitable medical facility for the purpose of a mental health examination only after a psychiatrist or qualified psychologist examines the child and makes a written finding that the child is in need of a mental health examination which cannot be effectively provided on an outpatient basis. The written finding of the psychiatrist or qualified psychologist shall be a part of the Division's order. These procedures for the inpatient mental health examination of a child shall not apply if the child is subject to the emergency hospitalization provisions of section 21-521.

(3)(A) Hospitalization for an examination shall be for a period of not more than 21 days, except that the Division may grant extensions which may not exceed 21 days in the aggregate if a psychiatrist or qualified psychologist certifies that a mental health examination has not been completed and cannot be effectively provided on an outpatient basis.

(B) If the examination is to determine whether the child is incompetent to proceed, an extension of time may not be granted unless the psychiatrist or qualified psychologist also certifies that the psychiatrist or qualified psychologist is unable to determine whether the child is incompetent to proceed and needs an additional period of time to complete the examination.

(b-1) A report of a mental health examination ordered under this section to determine whether a child is incompetent to proceed shall be made in writing and served on the court and the attorneys of record. The report shall include:

(1) An assessment of the child's capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition;

(2) An assessment of the child's ability to assist his attorney; and

(3) If the report concludes the child is incompetent to proceed:

(A) The reasons and bases for the conclusion;

(B) The suspected cause of the incompetence;

(C) An assessment of the likelihood of the child attaining competence in the reasonably foreseeable future; and

(D) If the child is assessed to be likely to attain competence in the reasonably foreseeable future:

(i) Any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and

(ii) A certification as to the least restrictive setting for providing such treatment and services.

(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is unlikely to attain competence in the reasonably foreseeable future, it shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

(2)(A) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is likely to attain competence in the reasonably foreseeable future, the Division shall order that the child receive such treatment on an outpatient basis, unless a psychiatrist or qualified psychologist certifies and the Division finds that inpatient hospitalization is the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

(B) If the Division determines that hospitalization is not appropriate, the child may be ordered into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving treatment and services that may render the child competent in the reasonably foreseeable future.

(3) If an order for inpatient hospitalization is made under paragraph (2) of this subsection, the Division may order the child sent to a hospital or mental health facility or unit designated by the Mayor as appropriate for treatment of juveniles alleged to be delinquent.

(4) If, at any time after the child is ordered to undergo treatment under paragraph (2) of this subsection, the psychiatrist or qualified psychologist responsible for the treatment believes the child is competent, or, in the case of a child hospitalized under paragraph (3) of this subsection, determines that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist



or qualified psychologist shall immediately send a report to the Division and attorneys of record stating the basis for the conclusion that the child has attained competency or that inpatient hospitalization is no longer the least restrictive setting.

(5)(A) The Division shall hold a prompt hearing upon receipt of a report under paragraph (4) of this subsection, and no more than once in a 45-day period, the Division, on motion of the child or the Corporation Counsel, may hold a hearing to determine the child's progress toward attaining competence.

(B) At any hearing conducted pursuant to this paragraph, the Division shall determine whether continued treatment and services are supported by a finding that the child is likely to attain competence in the reasonably foreseeable future. Where the psychiatrist or qualified psychologist has reported that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the Division shall order that any further treatment and services be rendered on an outpatient basis. In such case, the Division may order the child into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving continued treatment and services.

(6) The psychiatrist or qualified psychologist responsible for the treatment of the child shall ensure that a report is prepared and submitted to the Division and attorneys of record every 2 months, or at such shorter intervals as ordered by the court, from the date the treatment order is issued under paragraph (2) of this subsection. The report shall contain information regarding the child's progress toward attaining competency, the treatment being provided, and any recommendations regarding changes to the treatment that would be likely to aid in achieving the goal of the order. If the child is hospitalized, the report shall also include a statement indicating whether inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

(7)(A) No child ordered into a hospital, detention, or shelter care while receiving treatment and services under this section shall be so confined for more than 180 days, except the Division may order such confinement to continue for up to 180 more days if it finds that:

- (i) The child remains incompetent to proceed;
- (ii) There is a substantial probability the child will attain competence within the period of continued confinement; and
- (iii) In the case of a hospitalized child, that inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent to proceed.

(B) If at the end of 360 days a child so confined remains incompetent to proceed, and remains likely to attain competence in the reasonably foreseeable future, the Division shall lift the hospitalization, detention, or shelter care order and may order that the child receive on an outpatient basis such further treatment and services as may render the child competent in the reasonably foreseeable future.

(8) If the Division at any time determines that the child receiving treatment and services under this subsection is unlikely to attain competence

in the reasonably foreseeable future, the Division shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

(9) Nothing in this subsection shall prevent the Corporation Counsel from initiating commitment proceedings pursuant to Chapter 5 or 11 of Title 21 at any time.

(d) The results of an examination under this section shall be admissible in a transfer hearing pursuant to section 16-2307, in a dispositional hearing under this subchapter, or in a commitment proceeding under Chapter 5 or 11 of Title 21. The results of examination may be admitted into evidence at a factfinding hearing to aid the Division in determining a material allegation of the petition relating to the child's mental or physical condition, but not for the purpose of establishing a defense of insanity.

(e)(1) At any time following the filing of a petition which alleges a neglected child as defined by D.C. Official Code, section 16-2301(9)(C) the Division may, on its own motion or the motion of any party, for good cause shown, order the mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(2) Following an adjudication that a child is neglected, the Division may, on its own motion or the motion of any party, order a mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue.

(3) The Division may order additional mental examinations to be performed by independent experts upon a showing by any party that a prior examination is inadequate.

(4) The results of the mental or physical examination shall not be admissible evidence in the factfinding hearing unless the allegations contained in the petition set forth facts which support a petition pursuant to D.C. Official Code § 16-2301(9)(C).

(5) The results of the mental or physical examination shall be admissible at a dispositional hearing.

(6) The results of the mental or physical examination shall not be admissible as evidence in any criminal proceedings.

(f) Upon request of the Corporation Counsel, or his or her designee, the Division shall hold a hearing to determine whether there is probable cause to believe that a victim or eyewitness to a delinquent act alleged to have been committed by the respondent may have been put at risk for the HIV/AIDS virus. If the Division finds there is probable cause that a victim or eyewitness has been put at risk for the HIV/AIDS virus as a result of witnessing or being the victim of the delinquent act alleged to have been committed by the respondent, the Division shall order that the respondent be tested for the HIV/AIDS virus. The results of the child's HIV/AIDS testing shall be presented to the Corporation Counsel, or his or her designee, who shall provide the information to the respondent and to the victim or eyewitness to a delinquent act. The victim or eyewitness may only disclose the respondent's identity to a doctor or counselor.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 533,



Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 405, 24 DCR 3341; Mar. 5, 1981, D.C. Law 3-140, § 2, 3, 27 DCR 4558; Mar. 24, 1998, D.C. Law 12-81, § 10(bb), 45 DCR 745; Mar. 17, 2005, D.C. Law 15-261, §§ 202(c), 602(b), 52 DCR 1188.),

**Prior Codifications.** — 1981 Ed., § 16-2315.

1973 Ed., § 16-2315.

**Effect of amendments.** — D.C. Law 15-261, in subsec. (a), designated the existing text as par. (1), and added pars. (2) and (3); in subsec. (b), substituted “psychiatrist or qualified psychologist” for “psychiatrist” in par. (2), and rewrote par. (3); added subsec. (b-1); rewrote subsec. (c); and added subsec. (f).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 3-140.** — Law 3-140, the “Inpatient Health Examination of

Youth Act of 1980,” was introduced in Council and assigned Bill No. 3-220, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on July 29, 1980, and September 16, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-261 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.  
Competency for trial.  
Construction and application.  
Insanity defense.  
Mental illness.  
Mental retardation.  
Parens patriae.

### Admissibility of evidence.

Results of father’s court-ordered mental evaluations, which were prepared in anticipation of child neglect proceedings in which government alleged that the neglect was attributable to father’s mental incapacity, were not protected by the doctor-patient privilege, and thus, expert testimony and written reports regarding father’s mental health were admissible even without father’s waiver of privilege or consent. In re M.L., 28 A.3d 520, 2011 D.C. App. LEXIS 527 (2011).

Neither pediatrician’s lack of specialization in genetics (or in bone disorders) nor her partial reliance on another expert’s finding was ground for disqualifying her as expert in child neglect proceeding involving three-month-old baby who had multiple fractures; pediatrician was qualified by her training and experience to diagnose osteogenesis imperfecta, a congenital disorder causing weak bones, or its absence based on her clinical examination of baby and her review of x-rays and lab tests, her lack of expertise in causes and treatment of disorder and reliability of blood test for condition did not render her incompetent to give her diagnosis, and it was not unreasonable for pediatrician to rely on geneticist’s report of baby’s blood test result. In

re A.B., 999 A.2d 36, 2010 D.C. App. LEXIS 343 (2010).

Clinical psychologist’s testimony concerning the results of mother’s mental examination was not admissible during neglect proceeding, where the neglect petition did not contain factual allegations that would, if proved, supported a finding of neglect based on mother being unable to discharge her responsibilities for child because of mental incapacity. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

### Competency for trial.

Procedure followed in adult criminal proceeding had to be applied to determination of whether juvenile was mentally competent to stand trial in delinquency proceedings, as incompetency standard for juvenile proceedings did not adequately protect juvenile’s right to due process. D.C. Code 1989, §§ 16-2315(c)(1), 24-301(a); U.S. Const. Amends. 5, 14. In re W.A.F., 573 A.2d 1264, 1990 D.C. App. LEXIS 93 (1990).

Statutes governing competency in juvenile court and transfer proceedings are subject to due process standard requiring that the juvenile has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him. In re D.C., 129 WLR 1885 (Super. Ct. 2001).

### Construction and application.

Though statute indicating that a juvenile has right to raise an insanity defense has not been expressly repealed, it was repealed by implica-

tion when Congress enacted statute specifying that results of mental examination may not be used for the purpose of establishing a defense of insanity. D.C. Code §§ 16-2315, 24-301(c). In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

Neither subsection (e)(1) of this section itself, nor its legislative history, provides any special or unusual definition for "mental examination." Thus, under ordinary principles of statutory construction, the term must be given its usual and customary meaning in the relevant field of human endeavor. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Information concerning the mental health of a mother must be obtained through subsection (e)(1) of this section rather than § 2-1355. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Subsection (e)(1) of this section is a limited provision designed to secure a thorough examination of a custodian whose mental capacity is the subject of a neglect petition. Section 16-2359(e) is a much broader provision sweeping aside the husband-wife privilege and the doctor-patient privilege as regards any evidence which may be offered in the course of a termination hearing regardless of whether it was obtained through a subsection (e)(1) examination or otherwise and regardless of whether it concerns the child's custodian or other involved persons. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

From its plain terms, it is clear that subsection (e) of this section necessarily entails a significant degree of intrusion into confidential information concerning a parent's mental health. The examination provided for by this subsection is not voluntary; nor is it comparable to an examination of a personal injury plaintiff under Super. Ct. Civ. R. 35 where, if the plaintiff refuses to submit to the examination, the appropriate remedy is normally dismissal of the case. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

A mental examination ordered under subsection (e)(1) of this section normally includes review of records of past mental health treatment of the patient in question, and the appointing order thus overcomes the doctor-patient privilege with respect to that treatment. While the court, in ordering examinations under this section, may impose some restrictions with respect to the review of such records, an order which carries no such restrictions should properly be construed as permitting access to any past medical records of the patient. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

Subsection (e) is not inconsistent with the broad grant of authority granted by the language of § 2-1355. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

### **Insanity defense.**

Central question in determining whether statute which prohibits interposition of defense

of insanity by child charged with delinquency violates due process or equal protection is whether insanity defense serves some function essential to fundamental fairness that cannot otherwise be performed adequately by other procedures in the juvenile system. D.C. Code § 16-2315(d); U.S. Const. Amend. 5. In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

### **Mental illness.**

If the Family Division of the Superior Court finds that child offender was mentally ill at the time of the offense and is mentally ill at the time of disposition and is therefore in the need of care and treatment, it would be a clear abuse of discretion to confine the child to an institution where appropriate care and treatment is not available; but if the Division finds that the child was mentally ill at the time of the offense but at time of disposition is fully restored to mental health, Division would be required to determine whether in view of all the facts and circumstances the child is or is not in need of care and treatment. D.C. Code §§ 16-2315(a), (c)(1), 16-2317(c, d), 16-2320(a)(4), 16-2321(b, c). In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

The statutes and rules regulating juvenile delinquency proceedings in the District of Columbia provide adequate means of insuring that any mentally ill child offender receives care and treatment similar to that provided mentally ill criminal defendants, and thus statute which prohibits interposition of the defense of insanity by a child charged with delinquency does not violate due process and equal protection. D.C. Code §§ 16-2315 et seq., 16-2315(d), 16-2319, 16-2320(a)(4); D.C. Code SCR, Juvenile Rule 32(b), (c)(2); U.S. Const. Amend. 5. In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

### **Mental retardation.**

The standard of incompetency is defined differently in adult proceedings or proceedings involving juveniles subject to transfer to adult courts under § 24-301(a) than it is in juvenile proceedings under subsection (c) of this section. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

This section prescribes a standard of incompetency for juvenile delinquency proceedings which is precisely the same as the standard required for commitment of mentally retarded juveniles under D.C. Code § 21-1114 and 6-1926. In both instances, the respondent must be "at least moderately mentally retarded," as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. In re W.F., 116 WLR 1913 (Super. Ct. 1988).



Standard of incompetency prescribed by this section applies to criminal proceedings against a mildly retarded juvenile, thus he will be judged competent to stand trial under this section and would not be released because he fell outside the standard for commitment under § 6-1924. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

#### **Parens patriae.**

Both termination of parental rights (TPR) proceedings and neglect proceedings similarly require the trial court to consider the rights of the parent and the well-being of the child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

As *parens patriae*, the trial court must act to protect the child's welfare in a neglect proceeding and protect the child from serious risk of harm. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

The trial court's obligation, as *parens patriae*, to protect the child begins well in advance

of any adjudication of neglect, and requires the court to monitor the situation carefully and promptly take steps to protect the child if her physical or emotional welfare is endangered. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Court's *parens patriae* role in neglect proceeding comes into play before adjudication of neglect, even though corporation counsel also has *parens patriae* responsibilities. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

*Parens patriae* role allows court with jurisdiction of neglect case to provide relief necessary to protect best interests of child. D.C. Code 1981, §§ 16-2310(b, d), 16-2312, 16-2315. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **§ 16-2316. Conduct of hearings; evidence.**

(a) The Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect. The Corporation Counsel shall present evidence in support of all petitions arising under this subchapter and otherwise represent the District of Columbia in all proceedings.

(b) Evidence which is competent, material, and relevant shall be admissible at factfinding hearings. Evidence which is material and relevant shall be admissible at detention hearings, transfer hearings under section 16-2307, and dispositional hearings.

(c) Where the petition alleges a child is a neglected child by reason of abuse, evidence of illness or injury to a child who was in the custody of his or her parent, guardian, or custodian for which the parent, guardian or custodian can give no satisfactory explanation shall be sufficient to justify an inference of neglect.

(d)(1) Where the petition alleges a child is abandoned as referred to in section 16-2301(9)(A), as amended by this act, the following evidence shall be sufficient to justify an inference of neglect:

(A) the child is a foundling whose parents have made no effort to maintain a parental relationship with the child and reasonable efforts have been made to identify the child and to locate the parents for a period of at least four (4) weeks since the child was found;

(B) the child's parent gave a false identity at the time of the child's birth, since then has made no effort to maintain a parental relationship with the child and reasonable efforts have been made to locate the parent for a period of at least four (4) weeks since his or her disappearance;

(C) the child's parent, guardian or custodian is known but has abandoned the child in that he or she has made no reasonable effort to maintain a parental relationship with the child for a period of at least four (4) months; or

(D) the child has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child did not undertake any action or make any effort to maintain a parental, guardianship, or custodial relationship or contact with the child.

(2) It shall not be necessary to prove that the parent, guardian or custodian intended to abandon the child or that he or she is now dead. However, if the judge is satisfied that there was a satisfactory explanation for the abandonment he or she need not enter a finding of neglect.

(e)(1) All hearings and proceedings under this subchapter shall be recorded by appropriate means.

(2) Except in hearings to declare an adult in contempt of court, the general public shall be excluded from hearings arising under this subchapter.

(3) Except as provided in paragraph (4) of this subsection, only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court of the District of Columbia, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of the child's family involved in the proceedings.

(4) In cases involving delinquency proceedings, the victims and eyewitnesses and the immediate family members and custodians of the victims and eyewitnesses shall have a right to attend transfer, factfinding, disposition, and post-disposition hearings, subject to the rule on witnesses. Immediate family members and custodians of the victims and eyewitnesses shall have a right to be present during the victims' or eyewitnesses' testimony.

(5) Any person who by virtue of this subsection attends a transfer, factfinding, disposition, or post-disposition hearing shall be bound by the confidentiality requirements of sections 16-2331, 16-2332, and 16-2333, and shall be informed by the Division of these confidentiality requirements and the penalties for their violation as set out in section 16-2336.

(f) If the Division finds that it is in the best interest of the child, it may temporarily exclude him from any proceeding except a factfinding hearing. If the petition alleges neglect, the child may also be temporarily excluded from a factfinding hearing. In any case, counsel for the child may not be excluded.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 533, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(e), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(o), 35 DCR 147; June 8, 1990, D.C. Law 8-134, § 2(c), 37 DCR 2613; Feb. 5, 1994, D.C. Law 10-68, § 20(d), 40 DCR 6311; Mar. 13, 2004, D.C. Law 15-105, §§ 10(c), 34(a), 56, 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 602(c), 52 DCR 1188.)

**Prior Codifications.** — 1981 Ed., § 16-2316.

1973 Ed., § 16-2316.

**Effect of amendments.** — D.C. Law 15-

105, in subsec. (d), (d)(1), (d)(1)(D), validated a previously made technical correction.

D.C. Law 15-261 rewrote subsec. (e) which had read:



"(e) All hearings and proceedings under this subchapter shall be recorded by appropriate means. Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings arising under this subchapter. Only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of his family involved in the proceedings."

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned

Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-134.** — For legislative history of D.C. Law 8-134, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 15-105.** — For Law 15-105, see notes following § 16-1005.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**References in text.** — "This act," referred to in the introductory paragraph of subsection (d)(1), is the Act of September 23, 1977, D.C. Law 2-22 which is codified as § 4-1321.01 et seq., § 4-1301.02 et seq., and § 16-2301 et seq.

## CASE NOTES

### ANALYSIS

#### Admissibility of evidence.

—In general.

—Victim impact statements, admissibility of evidence.

Child witnesses.

Conduct of hearing.

Confidentiality.

Cross examination.

Expert witnesses.

In general.

Weight and sufficiency of evidence.

#### Admissibility of evidence.

— In general.

Hearsay which consisted of second videotaped interview of child's older sister at child advocacy center and foster mother's testimony that child and her older sister told her that child's father touched them inappropriately and engaged in sexual acts with each of them was admissible in hearing to determine father's visitation rights to child, who had been adjudicated neglected; hearsay was admissible in many different hearings brought throughout the neglect process that addressed the issue of a non-custodial parent's right visitation, and adequate safeguards existed to ensure that father had the opportunity to rebut the hearsay. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

A parent must be afforded a fair opportunity to present evidence to refute the charges of

child neglect—including probative live testimony from the child who is the subject of the charge, unless there is a compelling reason to preclude such testimony. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In evaluating the probative value of the testimony of a child involved in a neglect proceeding and the parent's concomitant need for it, the trial court should consider the materiality of the anticipated testimony in light of the allegations of neglect, the degree to which those allegations are grounded in the out-of-court statements of the child, the reliability of those statements, and the totality of the evidence. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In evaluating the probative value of the testimony of a child involved in a neglect proceeding and the parent's concomitant need for it, the court may require in an appropriate case that the parent proffer the testimony that he or she hopes to elicit from the child, and the basis for that proffer. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

So long as the trial court acts with due regard for the rights of the parent and the creation of an adequate record, the court may assess the importance of the child's testimony in a neglect proceeding by means of an informal in camera interview. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Any testimony in response to question asked by child's mother of her brother, about family's

pattern of placing children with family members to "co-rear" their offspring, was not admissible as relevant to mother's intent on issue of abandonment in child neglect proceeding, where, during the time in question, the child was placed in brother's custody as a result of a court order, not because of a co-rearing arrangement between family members, and mother made no effort to participate, directly or indirectly, in the care and upbringing of her child. In re Je.A., 793 A.2d 447, 2002 D.C. App. LEXIS 53 (2002).

#### — Victim impact statements, admissibility of evidence.

Juvenile courts are not categorically prohibited from admitting victim impact statements at juvenile disposition hearings based on potential for misusing them as evidence signifying need for retribution; rather, juvenile court judges are trusted to recognize the limited relevance of the statements to rehabilitation and to exercise caution in admitting them. In re M.N.T., 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

Whether victim impact statements should be excluded entirely from juvenile disposition proceedings would be addressed by Court of Appeals, though juvenile who challenged admission of such statements at his disposition proceeding had been released from custody and his case had been closed; question was the sort of overarching issue important to the resolution of a class of future cases that should be decided notwithstanding the lack of effect on juvenile. In re M.N.T., 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

#### Child witnesses.

A trial court should use its broad authority, to take whatever steps are necessary to protect the well-being of neglected and abused children, to explore avenues to protect a child witness from the negative effect of testifying; the court could, for example, consider using closed-circuit cameras to receive the child's testimony out of the physical presence of the parent accused of neglect, or consider whether its considerable discretion to control cross-examination, as well as direct examination, would alleviate the risk of harm. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

A parent's inability to make a good faith proffer of relevant testimony that she hopes to elicit from the child in a neglect proceeding may justify more careful control over the questioning to protect the child from undue trauma, and the court may also explore alternatives to taking testimony from the child that would meet the parent's needs, such as admitting evidence of out-of-court statements made by the child or

stipulations. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

#### Conduct of hearing.

Trial court did not commit reversible error in allowing Maryland prosecutor to remain in courtroom during juvenile's trial, in delinquency proceedings for unauthorized use of vehicle (UUV) and receiving stolen property (RSP); although proper procedure was not followed with respect to prosecutor, assuming he was not a member of state bar, prosecutor appeared to have a "proper interest" in proceeding because of related events in Maryland, trial judge implicitly gave prosecutor permission to remain in courtroom, and prosecutor would have had access to transcripts of proceeding. In re T.H., 905 A.2d 195, 2006 D.C. App. LEXIS 441 (2006).

Trial court was warranted in denying mother's motion to set aside determination of child neglect and reopen the proceedings when counsel finally located her and proffered testimony she would have offered against a finding of abandonment, where the court found that mother's proffered testimony, even if credited, added nothing significant to the record of her contacts with the child and the pattern of her failure to take any action to regain custody or even a relationship with her child. In re Je.A., 793 A.2d 447, 2002 D.C. App. LEXIS 53 (2002).

Trial court has statutory discretion to exclude persons from juvenile neglect proceeding even if persons have a proper interest. In re Ti B., 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's discretion to exclude persons from juvenile neglect proceeding is not to be exercised arbitrarily. In re Ti B., 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

To determine whether a person can be admitted into a delinquency proceeding, the court must decide whether the applicant has a "proper interest in the case or the work of the court," and if so, whether the juvenile's anonymity will be compromised if the applicant is permitted to attend the proceedings. In re M.A.M., 124 WLR 173 (Super. Ct. 1996).

Members of the press have a proper interest in attending juvenile proceedings; however, other people can also have a proper interest. In re M.A.M., 124 WLR 173 (Super. Ct. 1996).

#### Confidentiality.

Statutes addressing confidentiality of juvenile neglect hearings and records did not justify trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel



from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother, where criminal allegations against father were primary focus of neglect hearing, father found it necessary to invoke Fifth Amendment privilege while testifying in proceeding, criminal defense counsel's interest in case did not stem from idle curiosity or wrongful motive, and there was no reason to conclude that criminal defense counsel would breach statutory policy of confidentiality. In re Ti B., 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Primary purpose of statute and rule addressing confidentiality of juvenile neglect proceedings is not to enshroud neglect proceedings in an impenetrable veil of secrecy, but rather to preserve the anonymity of juvenile respondents other family members to foster an atmosphere conducive to rehabilitation. In re Ti B., 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

#### **Cross examination.**

In the exercise of its discretion to use its broad authority to take whatever steps are necessary to protect the well-being of neglected and abused children, the trial court has wide latitude to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

#### **Expert witnesses.**

Neither pediatrician's lack of specialization in genetics (or in bone disorders) nor her partial reliance on another expert's finding was ground for disqualifying her as expert in child neglect proceeding involving three-month-old baby who had multiple fractures; pediatrician was qualified by her training and experience to diagnose osteogenesis imperfecta, a congenital disorder causing weak bones, or its absence based on her clinical examination of baby and her review of x-rays and lab tests, her lack of expertise in causes and treatment of disorder and reliability of blood test for condition did not render her incompetent to give her diagnosis, and it was not unreasonable for pediatrician to rely on geneticist's report of baby's blood test result. In re A.B., 999 A.2d 36, 2010 D.C. App. LEXIS 343 (2010).

Erroneous exclusion of boyfriend's expert witness in neglect proceeding may have substantially swayed the outcome, and thus, boyfriend was entitled to relief; boyfriend indicated that his expert witness would rebut testimony of expert witness for District of Columbia, and trial court noted that the testimony of boyfriend's expert seemed especially probative of the issue of abuse charged on the part of the boyfriend and could conceivably do a great deal to refute the allegations. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Trial court was precluded from excluding testimony of expert witness whom mother's boyfriend intended to call to stand in neglect proceeding as a sanction for failure to identify that expert before trial, absent any violation by either the mother or boyfriend of their discovery obligations; it was undisputed that neither mother nor boyfriend were ever served with an interrogatory request to identify their experts, and were not asked even informally to identify their expert witnesses, and there was no pre-trial order that imposed a duty to make such disclosure. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

#### **In general.**

Where the government moves to dismiss a neglect petition on the specific ground that it cannot adduce sufficient evidence to satisfy its burden of proof, and there is no showing that the motion is not made in good faith, the court has no alternative but to grant the motion. In re D.B., 117 WLR 665 (Super. Ct. 1989).

#### **Weight and sufficiency of evidence.**

The test of child abandonment under the neglect statute is an objective one, asking whether the parent has made reasonable efforts to maintain a parental relationship. In re Je.A., 793 A.2d 447, 2002 D.C. App. LEXIS 53 (2002).

Evidence was sufficient to support trial judge's finding that for well over a year before the child neglect hearing, child's mother had taken no significant steps to maintain a parental relationship with the child, and thus, mother had abandoned her child within scope of the child neglect statute; although mother maintained that the court-ordered custodian, her brother, impeded mother's access to the child, record demonstrated that the brother was willing, and made efforts, to facilitate meetings between mother and the social worker designed to allow supervised visitation, but that the mother ignored those opportunities. In re Je.A., 793 A.2d 447, 2002 D.C. App. LEXIS 53 (2002).

**§ 16-2316.01. Scheduling of fact finding and dispositional hearings for children alleged to be neglected.**

(a) Except as provided in subsection (b)(3) of this section, a fact finding hearing for a child alleged to be neglected shall be combined with the dispositional hearing.

(b) The fact finding and dispositional hearing for a child alleged to be neglected shall be held within the time limits provided in this subsection.

(1) The fact finding and dispositional hearing shall be held within 45 days after the child's entry into foster care or, if the child is not in foster care, within 45 days of the filing of the petition.

(2) Upon motion of any party, for good cause shown, the fact finding and dispositional hearing of a child alleged to be neglected may be continued, and, as applicable, the child shall remain in shelter care, for up to an additional 30 days.

(3) Following completion of the fact finding phase, if the child is found to be neglected, upon motion of any party, for good cause shown, the dispositional phase may be continued and, as applicable, the child shall remain in shelter care for up to an additional 15 days.

(4) In determining whether good cause has been shown as required by paragraphs (2) and (3) of this subsection, the Division shall take into account, among other appropriate matters, and shall state its findings on the record, whether:

(A) There has been or will be a delay resulting from other proceedings concerning the child, including, but not limited to, examinations to determine the mental competency or physical capacity of the child or of a parent, guardian, or custodian, or from any interlocutory or expedited appeal;

(B) Any essential witness is absent or unavailable, meaning that his or her whereabouts are unknown or cannot be determined by due diligence or that his or her presence for the hearing cannot be obtained by due diligence; or any essential witness is otherwise unavailable;

(C) Despite the exercise of due diligence, necessary medical examinations, drug analysis, or other scientific tests have not been completed; or

(D) The best interests and safety of the child are best served by continuing the period of shelter care.

(c) Notwithstanding subsection (b)(2) and (3) of this section, the dispositional hearing for a child found to be neglected shall be held within 45 days after the child's entry into foster care, or if the child is not in foster care, within 45 days of the filing of the petition.

(Dec. 23, 1963, 77 Stat. 590, Pub. L. 88-241, as added June 27, 2000, D.C. Law 13-136, § 301(d)(2), 47 DCR 2850.)

**Temporary Amendment of Section.** — Section 3 of D.C. Law 13-193 amended this section to set timelines for factfinding and dispositional hearings.

Section 6 (b) of D.C. Law 13-193 provided that the act shall expire after 225 days of its having taken effect.

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 3(a) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) amendment of section, see § 3(a) of the Adoption and Safe Fam-



ilies Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) amendment of section, see § 3(a) of Adoption and Safe Families

Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 13-136.** — For Law 13-136, see notes following § 16-2301.

## § 16-2317. Hearings, findings; dismissal.

(a) Except as otherwise provided by statute or court rule, all motions shall be heard at the time of the factfinding hearing.

(b) After a factfinding hearing on the allegations in the petition, the Division shall make and file written findings in all cases as to the truth of the allegations, and in neglect cases, he shall also make and file written findings as to whether the child is neglected. The Court may not make a finding of neglect based solely on a finding that a child is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth. If the Division finds that —

(1) in the case of a delinquency petition, that the allegations have not been established by proof beyond a reasonable doubt; or

(2) in the case of a need of supervision or neglect petition, that the allegations have not been established by the preponderance of the evidence, the Division shall dismiss the petition and order the child released from any detention or shelter care or other restriction previously ordered. If the proceedings are not terminated after the factfinding hearing, the Division shall review the need for detention or shelter care of the child.

(c) If the Division finds in a factfinding hearing that —

(1) the allegations in a delinquency petition have been established by proof beyond a reasonable doubt; or

(2) the allegations in a need of supervision or neglect petition have been established by the preponderance of the evidence, the Division, after giving the notice required by subsection (e) of this section, shall proceed to hold a dispositional hearing. The Division may postpone a dispositional hearing to await the predisposition study and report of the Director of Social Services (in delinquency or need of supervision cases) or of the Director of the Child and Family Services Agency (in neglect cases) as required by section 16-2319. There shall be a rebuttable presumption that a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases.

(d)(1) If the Division finds that the child is not in need of care and rehabilitation, it shall terminate the proceedings and discharge the child from detention, shelter care, or other restriction previously ordered.

(2) Determinations of whether a child is in need of care or rehabilitation may only be made at or after the dispositional hearing, except that the Division may dismiss the petition and terminate proceedings, after giving the Corporation Counsel a reasonable opportunity to initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21, if the Division finds that the respondent is incompetent to proceed and that there is not a substantial probability that the respondent will attain competency in the reasonably

foreseeable future. If the Division dismisses the petition based on the respondent's incompetence to proceed, the dismissal shall be without prejudice to the government to refile if the respondent attains competence.

(3) To overcome the presumption of a need for care or rehabilitation in subsection (c) of this section, the Division must find by clear and convincing evidence at the dispositional hearing that the child is not in need of care or rehabilitation before it may terminate proceedings.

(4) The fact that a child is receiving care or rehabilitation in another case shall not be the only grounds for dismissal.

(5) In determining whether a child is in need of care and rehabilitation, the Division may consider the child's failure to appear at a scheduled hearing and shall:

(A) Consider any victim impact statement submitted to the Division;

(B) Hear from any eyewitnesses and victims, or the immediate family members of any eyewitnesses or victims when the eyewitness or victim is a child or when the eyewitness or victim is deceased or incapacitated, that wish to be heard and appear before the court; and

(C) Consider if the dismissal of the case is in the interest of the public welfare and the protection of the public security.

(e) The Division shall give prompt notice of any dispositional hearing as follows:

(1) In delinquency and need of supervision cases, to the child, his spouse (if any), and his parent, guardian, or custodian.

(2) In neglect cases, to the child and to the parent, guardian, or custodian named in the petition if he can be found.

(f) The Corporation Counsel shall give prompt notice, if practicable, of any disposition and post-disposition hearings to the victim, or the immediate family members or caretakers of the victim, or their duly authorized attorney, when the victim is a child or when the victim is deceased or incapacitated.

(July 29, 1970, 84 Stat. 534, Pub. L. 91-358, title I, § 121(a); Feb. 5, 1994, D.C. Law 10-68, § 20(e), 40 DCR 6311; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(6), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 3(b), 49 DCR 7815; Mar. 17, 2005, D.C. Law 15-261, §§ 502(b), 602(d), 52 DCR 1188; Apr. 24, 2007, D.C. Law 16-306, § 206(b), 53 DCR 8610.)

**Prior Codifications.** — 1981 Ed., § 16-2317.

1973 Ed., § 16-2317.

**Effect of amendments.** — D.C. Law 13-277, in subsec. (c)(2), added "(in delinquency or need of supervision cases) or of the Director of the Child and Family Services Agency (in neglect cases) as" following "Director of Social Services".

D.C. Law 14-206, in subsec. (b), inserted "The Court may not make a finding of neglect based solely on a finding that a child is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth."

D.C. Law 15-261, in subsec. (c)(2), substi-

tuted "There shall be a rebuttable presumption that a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases." for "In the absence of evidence to the contrary, a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases."; rewrote subsec. (d); and added subsec. (f). Prior to amendment, subsec. (d) read as follows: "(d) If the Division finds that the child is not in need of care or rehabilitation it shall terminate the proceedings and dis-



charge the child from detention, shelter care, or other restriction previously ordered.”

D.C. Law 16-306, in subsec. (d)(5), substituted “Division may consider the child’s failure to appear at a scheduled hearing and shall” for “Division shall”.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(b), (c) of the Juvenile Justice Temporary Act of 2004 (D.C. Law 15-223, March 16, 2005, law notification 52 DCR 3549).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(b), (c), of the Juvenile Justice Emergency Act of 2004 (D.C. Act 15-497, July 19, 2004, 51 DCR 7844).

For temporary (90 day) amendment of section, see § 2(b), (c) of Juvenile Justice Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-547, October 12, 2004, 51 DCR 9844).

For temporary (90 day) amendment of section, see § 2(b), (c) of Juvenile Justice Second Congressional Review Emergency Act of 2004 (D.C. Act 15-727, January 19, 2005, 52 DCR 1952).

For temporary (90 day) amendment of section, see § 206(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 206(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 206(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 206(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

**Legislative history of Law 10-68.** — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 16-2316.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

**Legislative history of Law 14-206.** — For D.C. Law 14-206, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-306.** — For Law 16-306, see notes following § 16-1001.

## CASE NOTES

### ANALYSIS

Discharge.  
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### Discharge.

Under District of Columbia law, even if the court determines after the factfinding hearing that an allegedly delinquent child has violated a criminal statute, the child may not be found delinquent, and must be discharged, if the court subsequently determines at or after the dispositional hearing that the child is not in need of care and rehabilitation. *Doe v. District of Columbia*, 706 F.Supp.2d 128, 2010 U.S. Dist. LEXIS 38230 (2010).

If it is shown in delinquency proceeding that the child is not in need of rehabilitation, the juvenile must be discharged. D.C. Code 1981, § 16-2305(d). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

### Dismissal of petition.

Trial court, once it had adjudicated juvenile as delinquent for plea involving misdemeanor theft, lacked authority to dismiss proceeding, to vacate delinquency adjudication, or to terminate probation for social reasons; words “at or after” in provision of statute that determinations of whether a child is in need of care or rehabilitation may only be made “at or after” the dispositional hearing could not be read so expansively as to permit dismissal of a petition, effectively infringing on agency director’s clear statutory prerogative to control juvenile’s term of probation. In re D.M., 47 A.3d 539, 2012 D.C. App. LEXIS 314 (2012).

When government seeks to dismiss neglect petition pretrial based upon good-faith determination that proof is insufficient, motion must be granted even over objection of guardian ad litem (GAL). D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Court's *parens patriae* role in neglect case does not override decision by corporation counsel to dismiss based on good-faith determination of insufficient evidence. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

If government seeks to dismiss neglect petition over objection of guardian ad litem (GAL) for reasons other than insufficient proof of neglect, e.g., rehabilitation of parent, court must while giving due weight to judgment of petitioning agency, make appropriate inquiry, including evidentiary one if necessary, to determine whether best interests of child will be served by dismissal. Neglect Rules 2, 18. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Trial court made adequate inquiry to determine whether best interests of children would be served by granting corporation counsel's motion to dismiss neglect proceeding based on change of circumstances in mother's living arrangements, including move to her own mother's home; court asked corporation counsel whether she had conducted adequate investigation of facts before moving to dismiss and considered representations of facts made by guardian ad litem (GAL) and legal arguments of parties. In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

Family division has authority to dismiss a delinquency petition at dispositional hearing if the court finds that child who committed a "delinquent act" is, nonetheless, not "in need of care and rehabilitation" and thus is not a "delinquent child." Juvenile Rules 48(b), 48 comment; D.C. Code 1981, §§ 16-2301(6, 7), 16-2320(c). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

Trial court, acting within its sound judicial discretion, has the power under Juvenile Court Rule to dismiss for social reasons delinquency petition filed against a juvenile, when such action is in the interests of justice and the welfare of the child; and such dismissal is subject to review only for abuse of discretion; however, upon request of the corporation counsel, the court must set forth its reasons for the dismissal. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity

to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. D.C. Code SCR, Juvenile Rule 48(b); D.C. Code §§ 16-2314, 16-2316(a), 16-2317(b). In re R., 310 A.2d 226, 1973 D.C. App. LEXIS 369 (1973).

Where the government moves to dismiss a neglect petition on the specific ground that it cannot adduce sufficient evidence to satisfy its burden of proof, and there is no showing that the motion is not made in good faith, the court has no alternative but to grant the motion. In re D.B., 117 WLR 665 (Super. Ct. 1989).

### Double jeopardy.

Once jeopardy has attached to juvenile in adjudicative hearing at which he is charged with misconduct which, if committed by adult would constitute a crime and, if proved, may result in institutional commitments, any subsequent adjudicative hearing for same offense is prohibited by Fifth Amendment prohibition against double jeopardy; overruling In re McDonald, 153 A.2d 651. U.S. Const. Amend. 5; D.C. Code §§ 16-2316, 16-2317. District of Columbia v. I.P., 335 A.2d 224, 1975 D.C. App. LEXIS 340 (1975).

In adult criminal trial or juvenile delinquency proceeding before court sitting without jury, jeopardy attaches when accused has been subjected to charge and court has begun to hear evidence. U.S. Const. Amend. 5; D.C. Code §§ 16-2316, 16-2317. District of Columbia v. I.P., 335 A.2d 224, 1975 D.C. App. LEXIS 340 (1975).

Where Family Division's *sua sponte* declaration of mistrial in fact-finding hearing on petition charging juvenile with robbery was not dictated by manifest necessity, retrial of juvenile was barred by constitutional prohibition on double jeopardy. U.S. Const. Amend. 5; D.C. Code §§ 16-2316, 16-2317. District of Columbia v. I.P., 335 A.2d 224, 1975 D.C. App. LEXIS 340 (1975).

Juvenile, whose counsel had secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, had waived any potential double jeopardy claim when his trial counsel acquiesced in continuation of hearing and reopening of count when registered owner of vehicle appeared in courtroom. U.S. Const. Amend. 5. In re J.A.H., 315 A.2d 825, 1974 D.C. App. LEXIS 377 (1974).

Even if double jeopardy claim had not been waived by defense counsel's failure to object to reopening following oral granting of motion for judgment of acquittal, such reopening would not have placed juvenile in double jeopardy since oral ruling was not equivalent to a final, written judgment. U.S. Const. Amend. 5. In re



J.A.H., 315 A.2d 825, 1974 D.C. App. LEXIS 377 (1974).

### **Due process.**

Mother's due process rights were not violated by statute limiting interlocutory appeals from order placing child in shelter care to appeals by the child. D.C. Code 1981, § 16-2328(a); U.S. Const. Amend. 5. In re S.J., 632 A.2d 112, 1993 D.C. App. LEXIS 252 (1993).

Unwed father who demonstrates full commitment to responsibilities of parenthood by coming forward to participate in rearing of his child acquires substantial protection under due process clause. U.S. Const. Amends. 5, 14. In re J.F., 615 A.2d 594, 1992 D.C. App. LEXIS 274 (1992).

Unwed father's statutory rights and his due process rights to notice and fair hearing were violated when trial judge used emergency review hearing to order disposition of child without giving prior notice to father and when judge, having previously indicated that disposition hearing would be held, proceeded to conduct review hearing. U.S. Const. Amends. 5, 14. In re J.F., 615 A.2d 594, 1992 D.C. App. LEXIS 274 (1992).

Due process permitted finding of child neglect to be based on preponderance of evidence, rather than clear and convincing evidence; statutory scheme involved temporary, third-party placement or supervised placement of child with parent for two-year period followed by annual reviews after notice and hearing and new determination that child was neglected. D.C. Code 1981, §§ 16-2317(c)(2), 16-2322(a); U.S.C. Const. Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

Due process standard applicable to juvenile delinquency hearing is essentially one of balancing degree to which various due process elements are necessary to insure fundamental fairness in juvenile court proceedings against extent to which such elements would destroy flexibility and confidentiality essential to juvenile court concept. D.C. Code §§ 16-2316, 16-2317. District of Columbia v. I.P., 335 A.2d 224, 1975 D.C. App. LEXIS 340 (1975).

### **Duty of court.**

Trial court did not exceed its authority under rule requiring it to schedule disposition hearing within 15 days after juvenile has pleaded guilty to or been found guilty of a criminal offense and is being detained pending disposition hearing by scheduling juveniles' disposition hearings more than 15 days after they pleaded guilty to criminal offenses, in order to obtain predisposition reports, as rule was directory, not mandatory; interpreting rule as compelling court to enter disposition or release juveniles without benefit of a predisposition report where preparation of report would take longer than 15 days

would not advance purposes of juvenile code, which were protection of community and child through treatment and rehabilitation, and such an interpretation would result in tension between rule and statute governing same subject matter. In re J.B., 906 A.2d 866, 2006 D.C. App. LEXIS 497 (2006).

Trial judge has independent responsibility in neglect proceeding to determine best interests of child. D.C. Code 1981, §§ 16-2319, 16-2319(c)(2)(D). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

If the Family Division of the Superior Court finds that child offender was mentally ill at the time of the offense and is mentally ill at the time of disposition and is therefore in the need of care and treatment, it would be a clear abuse of discretion to confine the child to an institution where appropriate care and treatment is not available; but if the Division finds that the child was mentally ill at the time of the offense but at time of disposition is fully restored to mental health, Division would be required to determine whether in view of all the facts and circumstances the child is or is not in need of care and treatment. D.C. Code §§ 16-2315(a), (c)(1), 16-2317(c, d), 16-2320(a)(4), 16-2321(b, c). In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

### **Guardians ad litem.**

Guardian ad litem (GAL) for child in neglect proceeding lacks authority to file neglect petitions or to maintain such proceedings independently of corporation counsel. D.C. Code 1981, §§ 16-2304(b)(3), 16-2305(a-c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Habeas corpus.**

Where juvenile had originally been determined to be a "dependent child," under provisions of law which was superseded upon enactment of District of Columbia Court Reorganization Act of 1970, and where a nontestimonial hearing was held after such enactment which apparently looked anew into the present status of the juvenile, resulting in a determination that the juvenile was a person in need of supervision, juvenile who alleged that such hearing lacked procedural rights guaranteed in de novo determinations of juvenile's status as prescribed by applicable provision of the new statute was not entitled to habeas corpus relief, since such hearing was not one required by law. D.C. Code §§ 11-1551, 16-2301 et seq., 16-2305, 16-2306(a), 16-2308, 16-2316, 16-2317; D.C. Code SCR, Juvenile Rules 7(C), 10, 32, 43. B. v. District of Columbia Dep't Human Resources, etc., 287 A.2d 827, 1972 D.C. App. LEXIS 348 (1972).

### **In general.**

A juvenile adjudication consists of a two-step

process: (1) a factfinding hearing to determine whether the allegations of the petition are true, and (2) a dispositional hearing to determine whether the child is in need of care and supervision. D.C. Code 1981, § 16-2305. In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

### **Motion for acquittal.**

Procedure relating to filing of motion for judgment of acquittal after discharge of jury or court's judgment as provided by criminal rule is not authorized in juvenile proceedings. D.C. Code SCR, Criminal Rule 29(c); Juvenile Rule 29. In re J. N. H., 293 A.2d 878, 1972 D.C. App. LEXIS 234 (1972).

### **Neglect proceedings.**

Though physical or mental discipline of a child is permissible in appropriate situations, the discipline, in order to not constitute abuse in neglect proceeding, must be reasonable under the facts and circumstances of the case. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

An individualized finding of imminent danger must be made for each child subject to neglect adjudication based on finding that child is in imminent danger of being abused and that child's sibling or another child in same household has been abused; finding of imminent danger does not necessarily follow from the fact that a sibling has been abused, but rather court must be apprised of the entire mosaic and must address the risks attendant on removing a child from his home as well as those involved in keeping the child where he or she is. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Although a neglect proceeding is remedial and focuses on the situation of the child rather than of the parent, the rights of the parent are not to be overridden lightly. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Balancing test a trial court must undertake in order to preclude a parent from examining her child in a neglect proceeding includes three case-specific factual determinations: (1) the trial court must make a finding on the record that testifying would create a risk of serious harm to the child; (2) if the trial court finds that the child is at risk of serious harm from having to testify, the court must consider whether the risk can be alleviated by means short of prohibiting the testimony altogether; and (3) after taking into consideration the risk of harm to the child and the possibility of ameliorative measures, the court must evaluate the probative value of the child's testimony and the parent's concomitant need for it. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In evaluating the probative value of the testimony of a child involved in a neglect proceeding and the parent's concomitant need for it, the trial court should consider the materiality of the anticipated testimony in light of the allegations of neglect, the degree to which those allegations are grounded in the out-of-court statements of the child, the reliability of those statements, and the totality of the evidence. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In evaluating the probative value of the testimony of a child involved in a neglect proceeding and the parent's concomitant need for it, the court may require in an appropriate case that the parent proffer the testimony that he or she hopes to elicit from the child, and the basis for that proffer. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

A parent's inability to make a good faith proffer of relevant testimony that she hopes to elicit from the child in a neglect proceeding may justify more careful control over the questioning to protect the child from undue trauma, and the court may also explore alternatives to taking testimony from the child that would meet the parent's needs, such as admitting evidence of out-of-court statements made by the child or stipulations. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

The decision whether to permit mother to call her children as witnesses in neglect proceeding was not delegable to the guardian ad litem; responsibility for weighing mother's need for the children's testimony against the risk of harm to the children belonged to the trial court. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Trial court did not have authority to remove child custody from mother and award permanent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-



2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

In neglect proceeding, the disposition hearing generally follows an adjudication that the child has been neglected and focuses upon plans affecting the child's future care and custody. D.C. Code 1981, § 16-2301(9). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

### **Parties.**

Corporation counsel has exclusive authority to file neglect petition, and District of Columbia must be party to neglect proceeding. D.C. Code 1981, § 16-2305(c, f). In re J.J.Z., 630 A.2d 186, 1993 D.C. App. LEXIS 200 (1993), writ of certiorari denied by 511 U.S. 1072, 114 S. Ct. 1651, 128 L. Ed. 2d 370, 1994 U.S. LEXIS 3389, 62 U.S.L.W. 3722 (1994).

### **Presumptions and burden of proof.**

Evidence presented during neglect hearing was insufficient to establish that mother was mentally incapacitated to the extent that she was unable to care for her children; testimony from clinical psychologist regarding mother's mental examination were improperly admitted, and the only other evidence of mental incapacity was father's statement that mother functioned at the level of a second-grader. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

In a child neglect proceeding, the District of Columbia has the burden of proving by a preponderance of the evidence that a child is neglected. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

In child neglect proceedings, government bears the burden of proving neglect in all its elements by a preponderance of the evidence. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In a child neglect proceeding, the District has the burden of proving by a preponderance of the evidence that a child is neglected, as statutorily defined. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

An inference of child neglect is dependent upon the rationality of the connection between the facts proved and the ultimate fact presumed. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Trial judge could properly find on basis of direct, and as circumstantial evidence that government met its burden of proof to show that neglect of child was not due to mother's financial inability, for purposes of statute defining neglected child as one without proper parental care or control and deprivation is not due to lack of financial means; father testified that mother was receiving public assistance, mother admitted that her absences from home resulted when she was looking for an apartment and

went to buy food which suggested a present ability to pay a babysitter, and mother conceded she presented no evidence that assistance was inadequate or unavailable to cover babysitting costs had they been necessary. D.C. Code 1981, § 16-2301(9)(B). In re D.C., 561 A.2d 477, 1989 D.C. App. LEXIS 129 (1989).

Generally, proof that failure of proper care of child was not due to parent's lack of financial means is a part of government's burden of proof under statute defining neglected child as one who is without proper parental care or control and deprivation is not due to lack of financial means of parent, guardian or other custodian; however, there may be instances in which neglect is completely unrelated to financial status of parent and it is perfectly proper for government to meet its burden to prove lack of proper care and control without also providing affirmative showing of parent's financial status. D.C. Code 1981, § 16-2301(9)(B). In re D.C., 561 A.2d 477, 1989 D.C. App. LEXIS 129 (1989).

In a child neglect proceeding, the government must prove its case by a preponderance of evidence. D.C. Code § 16-2317(c)(2). In re K., 429 A.2d 1331, 1981 D.C. App. LEXIS 259 (1981).

While there is a statutory presumption that the commission of a crime shows the need for care or rehabilitation, where such presumption is successfully rebutted the juvenile must be discharged in a delinquency proceeding. D.C. Code § 16-2317. In re M. C. F., 293 A.2d 874, 1972 D.C. App. LEXIS 236 (1972).

### **Review.**

Trial court's act of admitting witness's testimony in neglect proceeding recounting child's statements to her concerning how she was injured did not constitute plain error, even though defendant claimed such statements were hearsay; witness's testimony concerning child's statements to would have been admissible under the medical diagnosis exception to the hearsay rule had an objection been made at trial, as witness was school nurse and child made such statements to nurse while child was receiving medical treatment. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

In determining whether the District of Columbia established by a preponderance of evidence that a child is neglected, Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

An appellate court will assess whether the evidentiary inquiry made by the trial court in a child neglect proceeding was adequate to permit a truly informed decision, and if the inquiry

was superficial, an appellate court may remand for further proceedings. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Deference is due to a trial court's determination of abuse or neglect in child neglect proceeding and an appellate court will not second-guess the trial judge on a very difficult call. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In evaluating on appeal whether the government, in a child neglect proceeding, met its burden of proving neglect in all its elements by a preponderance of the evidence, an appellate court must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In determining whether the government has proven beyond a preponderance of the evidence that a child is neglected, the Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

If a claim of evidentiary insufficiency is raised on appeal in a child neglect proceeding, the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

On appeal from a judgment finding a child to be neglected, the Court of Appeals must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Deference is due to the trial court's determination of child abuse or neglect, and the Court of Appeals will not second-guess the trial judge on a very difficult call. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

On remand from determination of Court of Appeals that evidence was insufficient to support adjudication of child as medically neglected, trial court would not be directed to terminate the proceedings; rather it would be given discretion to decide whether the hearing should be reopened for the presentation of expert medical testimony to determine if parent's care of her child's persistent eczema was inadequate, or to decide whether an alternative course of action would be appropriate. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

In reviewing motions judge's decision as to whether defendant was in police custody when he made incriminating statements, Court of Appeals defers to his findings of evidentiary

fact, but determines ultimate question of law de novo. U.S. Const. Amend. 5. In re E.A.H., 612 A.2d 836, 1992 D.C. App. LEXIS 225 (1992).

### Scope of argument.

Government violated its plea agreement to waive allocation at juvenile disposition by arguing that juvenile was in need of care and rehabilitation, rather than merely arguing court's authority to dismiss, in opposition to motion to dismiss juvenile proceeding. D.C. Code 1981, § 16-2301(6). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

### Sufficiency of findings.

Trial court findings that mother's children were neglected based on the children being without proper parental care or control and based on mother failing to discharge her responsibilities to the children because of mental incapacity were not mutually exclusive and contradictory; the two findings were independent of each other, the court's finding of neglect based on lack of parental care and control was based on the condition of the children, and the finding that mother was unable to discharge her responsibilities due to mental incapacity was based on mother's fitness as a parent and her ability to provide care. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

An adjudication of neglect based on finding that child is in imminent danger of being abused and that child's sibling or another child in same household has been abused requires the court to make two separate and independent findings: first, that a sibling or another child in the same household has been abused, and second, that the child in question is in imminent danger of being abused. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

In order to justify a trial court's finding in a neglect proceeding that requiring a child to testify would create a risk of serious harm to the child, the finding must not be based solely on generic concerns; rather, the finding must rest upon concrete evidence individualized to the particular child and, although expert testimony may not always be required, it will often be the best evidence of such a risk. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Order in neglect proceedings barring all visitation between father and his sons could not be based on allegation that father sexually abused oldest son, absent factual inquiry and finding as to whether such abuse actually occurred. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Trial judge in neglect proceeding could not properly rely on terms of civil protection order in absence of examination of challenges raised by natural father to findings underlying the



order. D.C. Code 1981, §§ 16-2319, 16-2319(c)(2)(D). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Even if trial judge could properly take civil protection order at face value in neglect proceeding, judge still had to determine whether father's right of visitation should be denied because it would be detrimental to best interest of child. D.C. Code 1981, § 16-2319(c)(2). In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court in neglect proceeding brought against natural father placed too much emphasis on previous civil protection order which was not designed to restrict assessment of trial judge in neglect case of how visitation was to be achieved, and arose out of intrafamily; where there was evidence in neglect proceeding suggesting that it was in best interest of child for both parents to have counseling, which was never addressed by trial judge or any of parties, and there was no longer any basis for deferring visitation on alcohol rehabilitation provision in civil protection order, nor basis for deferring visitation even if father had problems for which he needed counseling on parenting and his relationship with child's mother. D.C. Code 1981, § 16-2319. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Neglect statute contemplates that in a neglect proceeding trial judge will make independent determination of proper disposition in best interest of child based, at least, on reading predisposition report. D.C. Code 1981, §§ 16-2319, 16-2320. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court could not reasonably rely, in neglect proceeding which resulted in denial of visitation, on concern expressed in predisposition report that there had been no evaluation of father; by time of disposition proceeding, father had undergone evaluation called for in civil protection order. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Terse and conclusory statement by trial judge at neglect proceeding brought against natural father without reference to material evidence before him was not sufficient, where father made request for specific finding on his right to visitation. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Trial court's failure in neglect proceeding to make independent legal conclusion, based on factual findings, regarding father's visitation rights, rather than relying on previous civil protection order, was error, and the error was not harmless; nature of documentary evidence before trial court was critical, in that there was predisposition report, psychiatric evaluation, and transcript of intrafamily proceeding, and it was impossible to know whether trial court would have denied father any right of visitation with his child under any conditions if court had

read psychiatric evaluation and reviewed transcript of intrafamily proceeding. D.C. Code 1981, § 16-2319. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Where no judgment had been included in record of delinquency proceeding and, instead, a handwritten entry had been made on case jacket stating, "Respondent found guilty," so that, without recourse to transcript, it was not possible to know precise findings and adjudication, rule providing that judgment "shall set forth the plea, the findings, the adjudication, and the disposition of order" was not complied with and case was subject to being remanded for compliance. D.C. Code SCR, Juvenile Rules 31(a), 32(b). In re J.F.T., 320 A.2d 322, 1974 D.C. App. LEXIS 226 (1974).

Superior court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. D.C. Code SCR, Juvenile Rule 48(b). District of Columbia v. D.E.P., 311 A.2d 831, 1973 D.C. App. LEXIS 394 (1973).

### **Trial by jury.**

In proceeding to trial and disposition in delinquency proceedings after United States Attorney charged juvenile with committing armed robbery, family division judge did not violate juvenile's constitutional right to trial by jury, even though alleged purse snatching, which gave rise to delinquency proceedings, occurred after alleged armed robbery. D.C. Code 1981, §§ 16-2301(3), 16-2316(a); U.S. Const. Amend. 6. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

### **Weight and sufficiency of evidence.**

Evidence was sufficient to support finding that oldest child was in imminent danger of being abused and that child's sibling had been abused, as to justify finding of neglect; mother admitted to having beaten child with a belt when he misbehaved and did not offer any reason for such a punishment. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was sufficient to support finding that middle child was abused by mother, as to justify finding of neglect; middle child had a bleeding cut over her left eye that was caused by her mother's striking her with a broom handle because child could not locate her school uniform, child had an abrasion on her arm that had been inflicted by her mother two days

earlier when she would not sit still while her hair was being groomed, and child had scratch marks around her neck, again stemming from her mother's physical punishment during a previous hair grooming session. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was not sufficient to support finding that youngest child was in imminent danger of being abused and that child's sibling had been abused, and thus did not justify finding of neglect; no evidence existed that spankings inflicted on child were abusive or unreasonable in nature, and mother testified that she did not use a belt on child. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

Evidence was sufficient to support finding that father neglected his three children; father was incarcerated, father left his children with his live-in girlfriend but did not "discharge his responsibilities" due to his failure to provide girlfriend with any legal right to the children, girlfriend found out that father was incarcerated after the incarceration began, and father was unable to "discharge his responsibilities" when mother of the children, who was a crack addict, took custody of the children. In re T.T.C., 855 A.2d 1117, 2004 D.C. App. LEXIS 416 (2004), amended by 868 A.2d 859, 2005 D.C. App. LEXIS 38 (D.C. 2005).

A single snapshot of a family's existence may be vivid and evocative for purposes of determining if children are neglected, and sometimes it may suffice, but usually it is an unsatisfactory basis on which to make the important judgments required in a child neglect proceeding. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Evidence was insufficient to support finding of neglect based on mother being unable to

discharge her responsibilities to her three children based on her drug addiction; there was no evidence that connected mother's drug addiction with the neglect of the children. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Evidence was sufficient to support finding of neglect based on mother's three children being without proper parental care or control or education as required by law, or other care or control necessary for their physical, mental, or emotional health, and the deprivation was not due to mother's lack of financial means; mother's two schoolaged children were chronically tardy, children were unclean, social worker described mother's home as "filthy," mother was uncooperative with social workers, and mother had a history of drug abuse and had tested positive for cocaine one month before the hearing. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Evidence of chronic and unexplained sexual injuries in young children while in custody of their parents was sufficient to justify inference of neglect; doctor testified that manipulation of genitals in children was "chronic," indicating that both children were abused on more than one occasion, mother's only explanation was that wounds were caused from bike riding, which theory that was disavowed by doctor's testimony, and doctor also observed that children's wounds healed after they were removed from parents' care. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Trial court's finding, in neglect hearing, that children were not malnourished was supported by evidence that family was borrowing money to feed children. D.C. Code 1981, § 16-2301(9). In re T.G., 684 A.2d 786, 1996 D.C. App. LEXIS 238 (1996).

## § 16-2318. Order of adjudication noncriminal.

A consent decree, order of adjudication, or order of disposition in a proceeding under this subchapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction, except the revocation of a motor vehicle operator's permit or privilege in accordance with [§ 50-1403.02], nor does it operate to disqualify a child in any future civil service examination, appointment or application for public service examination, or appointment or application for public service in either the Government of the United States or of the District of Columbia.

(July 29, 1970, 84 Stat. 534, Pub. L. 91-358, title I, § 121(a); Mar. 16, 1989, D.C. Law 7-222, § 3, 36 DCR 570.)

**Prior Codifications.** — 1981 Ed., § 16-2318.

1973 Ed., § 16-2318.

**Legislative history of Law 7-222.** — Law 7-222, the "Motor Vehicle Operator's Permit

Revocation Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-489, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988, and December



13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-297

and transmitted to both Houses of Congress for its review.

## CASE NOTES

### ANALYSIS

Criminal provisions.  
Evidence of other offenses.  
Juvenile proceedings, generally.  
Review.  
Sentencing.  
Trial by jury.

### Criminal provisions.

Criminal statute permitting court to place first time drug offender on probation without judgment of guilt does not apply in juvenile delinquency proceedings. D.C. Code 1981, § 33-541(e). In re D.F.S., 684 A.2d 1281, 1996 D.C. App. LEXIS 244 (1996).

Juvenile who admitted possessing crack cocaine in delinquency proceedings could not be immediately placed on probation under provision of Controlled Substance Act authorizing court to place first time drug offender on probation without judgment of guilty; statute applied only in criminal proceedings and protections of juvenile proceeding were adequate. D.C. Code 1981, §§ 16-2331(b), 16-2332(b), 16-2333(a), 16-2334(a), 33-541(e). In re D.F.S., 684 A.2d 1281, 1996 D.C. App. LEXIS 244 (1996).

### Evidence of other offenses.

Police officers' testimony that defendant had "numerous contacts" with officers "in an official police manner" did not prejudice defendant and was admissible to show that officers could identify defendant as perpetrator of assault against one officer; phrases did not translate into "police arrests," defendant never moved for mistrial based on those phrases, and trial court gave limiting instruction that jury was not to assume that defendant had committed law violations in the past. *Butler v. United States*, 688 A.2d 381, 1996 D.C. App. LEXIS 285 (1996).

### Juvenile proceedings, generally.

Sex Offender Registration Act applied to parolee who committed sex offense while juvenile, as parolee was prosecuted and sentenced as adult, and was still "under supervision," i.e., on parole, when Act took effect. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

The Sex Offender Registration Act applies to a sex offender who committed a registration offense as a juvenile but who was lawfully prosecuted, convicted and sentenced as an adult. *Cannon v. Igborzurkie*, 779 A.2d 887, 2001 D.C. App. LEXIS 168 (2001).

Juvenile system is not criminal system, but is one which has as its primary focus welfare and rehabilitation of child, rather than simply child's factual guilt or innocence. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Delinquency proceedings are not "criminal prosecutions" within meaning of Sixth Amendment, which guarantees right to speedy trial. U.S.C. Const. Amend. 6. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

### Review.

Sentencing court, in imposing guidelines sentence that took into account defendant's juvenile adjudications as criminal history, demonstrated that it correctly understood the scope of its discretion, in assessing those offenses and concluding that nothing in the record overrepresented defendant's likelihood to commit further crimes, and thus failure to depart downward was not reviewable. U.S.S.G. § 4A1.3, p.s., 18 U.S.C. *United States v. Johnson*, 28 F.3d 151, 1994 U.S. App. LEXIS 16771 (C.A.D.C. 1994).

District of Columbia had right to appeal order of Family Division of Superior Court, entered at prehearing stage of juvenile delinquency proceeding, suppressing as evidence unregistered pistol and suppressing certain statements made by subject child prior to his arrest. D.C. Code §§ 16-2301, 16-2318, 22-3204, 23-104(a)(1); D.C. Code SCR, Juvenile Rules 11, 31(c). *District of Columbia v. M.E.H.*, 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. D.C. Code §§ 16-2301(7), 16-2318, 23-101(f). *District of Columbia v. M.E.H.*, 312 A.2d 561, 1973 D.C. App. LEXIS 395 (1973).

### Sentencing.

Sentence taking into account defendant's juvenile adjudications as part of criminal history under the Sentencing Guidelines was not subject to attack on theory that guideline authorizing consideration of juvenile offenses is not entirely neutral because of evidence that race and socio-economic status influence process resulting in juvenile adjudications and orders of confinement, where defendant did not profess innocence of any of the offenses making up his record and did not contend that he was discriminated against in sentence imposed in the instant case or the dispositions of the juvenile

court. U.S.S.G. § 4A1.2(d), 18 U.S.C.App.; 18 U.S.C. § 994(d). United States v. Johnson, 28 F.3d 151, 1994 U.S. App. LEXIS 16771 (C.A.D.C. 1994).

**Trial by jury.**

In proceeding to trial and disposition in delinquency proceedings after United States Attorney charged juvenile with committing

armed robbery, family division judge did not violate juvenile's constitutional right to trial by jury, even though alleged purse snatching, which gave rise to delinquency proceedings, occurred after alleged armed robbery. D.C. Code 1981, §§ 16-2301(3), 16-2316(a); U.S. Const.Amend. 6. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

**§ 16-2319. Predisposition study and report.**

(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to section 16-2317(c) sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency designated by the Division concerning the child, the child's family, the child's environment, and other matters relevant to the need for treatment or disposition of the case. The predisposition report shall include, and take into consideration, any victim impact statement submitted by the victim and the victim's immediate family members, the Director of Social Services, or by the Corporation Counsel. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing.

(b) The social investigation and plan for the family prepared pursuant to section 109 of the Prevention of Child Abuse and Neglect Act of 1977 shall satisfy the requirements of subsection (a) of this section. Such investigation and plan shall be made available to all counsel in the proceedings at least five (5) days prior to the date of trial; provided, however, that the investigation and plan shall not be furnished to or considered by the court prior to the completion of the fact-finding hearing.

(c)(1) The report to the Division in neglect cases shall include, but not be limited to, the following information:

(A) the specific harms intervention is designed to alleviate;

(B) the plans for alleviating these harms including specific services, the proposed providers of the services recommended and the actions the parent, guardian, or custodian should take to alleviate these harms, including but not limited to parenting classes and family counseling if the Division orders either service.

(C) the estimated time in which the goals of intervention may be achieved or in which it will be known that the goals may not be achieved; and

(D) the criteria to be used to determine that intervention is no longer necessary; and,

(2) If the removal of the child from his parent, guardian, or custodian is recommended, the report shall also include:

(A) the recommended type of placement;

(B) the reasons why the child cannot be protected in his or her home;

(C) the likely harm the child will suffer as a result of the separation from his or her parent, guardian, or custodian and recommended steps to be taken to minimize this harm; and



(D) the plans for maintaining contact between the parent and child through visitation rights in order to maximize the parent-child relationship consistent with the well-being of the child.

(d) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division under sections 16-2317 and 16-2320 transferring legal custody of a child to the custody of the Youth Services Administration, the Youth Services Administration shall conduct an evaluation of the child to determine the appropriate services and to develop an individualized treatment plan for the child.

(e) The Youth Services Administration shall examine the child and investigate all pertinent circumstances in the child's background that will contribute to the development of the individualized treatment plan.

(f) The Youth Services Administration shall complete an initial assessment of the child within 3 days of taking legal custody of the child and receipt of the social file from the Director of Court Social Services and shall develop the individualized treatment plan within 14 days of completing the initial assessment of the child, unless a longer diagnostic phase is needed for the child and is justified in writing in the child's initial assessment. If the Youth Services Administration does not receive the social file within 7 days of the disposition order, the Division shall order the Director of Court Social Services to immediately produce the social file.

(g) The Division may, on its own motion or the motion of any party, for good cause shown, extend the time periods set forth in subsection (f) of this section for completion of the initial assessment and the individualized treatment plan.

(July 29, 1970, 84 Stat. 535, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(f), title IV, § 406, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 3(c), 42 DCR 4; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(7), 48 DCR 2043; Mar. 17, 2005, D.C. Law 15-261, §§ 602(e), 902, 52 DCR 1188.)

**Prior Codifications.** — 1981 Ed., § 16-2319.

1973 Ed., § 16-2319.

**Effect of amendments.** — D.C. Law 13-277, in subsec. (a), added "(in delinquency or need of supervision cases) or the Director of the Child and Family Services Agency (in neglect cases)" following "Director of Social Services".

D.C. Law 15-261 rewrote subsec. (a) and added subsecs. (d) to (g). Prior to amendment, subsec. (a) read as follows: "(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to subsection (c) of section 16-2317 sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services (in delinquency or need of supervision cases) or the Director of the Child and Family Services Agency (in neglect cases) or a qualified agency designated by the Division concerning the child, his family, his environment, and other matters relevant to the need for treat-

ment or disposition of the case. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing."

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 10-227.** — For legislative history of D.C. Law 10-227, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**References in text.** — Section 109 of the Prevention of Child Abuse and Neglect Act of 1977, referred to in the first sentence in subsection (b) of this section, is § 109 of the Act of September 23, 1977, D.C. Law 2-22 codified as § 4-1321.01 et seq., 4-1301.02 et seq., and 16-2301 et seq.

## CASE NOTES

## ANALYSIS

Delinquency proceedings.

Neglect proceedings.

Notice.

Parent and child.

Procedural safeguards.

Racial considerations.

Review.

**Delinquency proceedings.**

Trial judge's decision in juvenile delinquency case to enter, prior to reviewing an individualized education program, a disposition that ordered residential placement at hospital was not an abuse of discretion or otherwise improper, as neither the juvenile justice laws nor the IDEA required such a review. *In re C.S.*, 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Beyond the statutorily mandated predisposition report, the trial court in a juvenile delinquency case has broad discretion to choose what information it will consider in making its determination. *In re C.S.*, 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Any victim impact statement that government intends to introduce at juvenile disposition hearing should be made part of the predisposition report and furnished to the juvenile's counsel; specifically, if Corporation Counsel intends to seek admission of written statements, those should be made available to the report-preparer for timely inclusion, and if the intent instead is to introduce oral statements, a synopsis of these should likewise be included in the report. *In re M.N.T.*, 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

Family court was entitled to commit juvenile adjudged delinquent to residential treatment program without first allowing Department of Human Services to evaluate juveniles and recommend proper placement to court; family court made placement decision based upon redispotion report prepared by division of social services, and Department of Humans Services subsequently acquiesced to placements. D.C. Code 1981, §§ 16-2319, 16-2319(a), 16-2320. *In re M.C.S.*, 555 A.2d 463, 1989 D.C. App. LEXIS 39 (1989).

**Neglect proceedings.**

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed.

D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Neglect statute contemplates that in a neglect proceeding trial judge will make independent determination of proper disposition in best interest of child based, at least, on reading predisposition report. D.C. Code 1981, §§ 16-2319, 16-2320. *In re M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

**Notice.**

Notification of father's attorney by social worker, less than five business days before dispositional hearing, of availability of predisposition report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was insufficient to meet due notice requirement of child support statute; while five-day prefiling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter which required different factual and legal focus. D.C. Code 1981, §§ 16-916.1, 16-2319(b), 16-2325. *In re X.B.*, 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of predispositional report, less than five business days before dispositional hearing, was inadequate to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. *In re X.B.*, 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

**Parent and child.**

Right of father to have visitation with his child could not be denied without consideration of psychiatric evaluation in accordance with civil protection order, which trial judge was advised did not support earlier concerns about father's mental health or alcoholism. D.C. Code 1981, § 16-2319(c)(2)(D). *In re M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Right of parent to have visitation with his child cannot be denied on basis of outdated recommendation in predisposition report. D.C. Code 1981, § 16-2319(c)(2)(D). *In re M.D.*, 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

**Procedural safeguards.**

Trial court did not have authority to remove child custody from mother and award perma-



nent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

The statutes and rules regulating juvenile delinquency proceedings in the District of Columbia provide adequate means of insuring that any mentally ill child offender receives care and treatment similar to that provided mentally ill criminal defendants, and thus statute which prohibits interposition of the defense of insanity by a child charged with delinquency does not violate due process and equal protection. D.C. Code §§ 16-2315 et seq., 16-2315(d), 16-2319, 16-2320(a)(4); D.C. Code SCR, Juvenile Rule 32(b), (c)(2); U.S. Const. Amend. 5. In

re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

#### **Racial considerations.**

Racial considerations, whether overt or covert, form impermissible basis for decision as to disposition of juvenile. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

#### **Review.**

Error in permitting government to present victim impact statements at juvenile disposition hearing without providing them to juvenile beforehand in predisposition report had no effect on disposition that committed juvenile to youth center for indeterminate period not to exceed his twenty-first birthday; disposition was authorized by statute and was warranted by gravity of 16-year-old juvenile's admission, in pleading guilty, to facts establishing that he carjacked vehicle while armed and assaulted and threatened to kill two correctional officers. In re M.N.T., 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

### **§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.**

(a) If a child is found to be neglected, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Permit the child to remain with his or her parent, guardian, or other custodian, subject to such conditions and limitations as the Division may prescribe, including, but not limited to, the following services for the child and his or her parent, guardian, or other custodian:

(A) medical, psychiatric, or other treatment at an appropriate facility under protective supervision;

(B) parenting classes; and

(C) family counseling.

(2) Place the child under protective supervision.

(3) Transfer legal custody to any of the following —

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Mayor of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement likely to be less damaging to the child than the child's own home.

It shall be presumed that it is generally preferable to leave a child in his or her own home.

(4) Commitment of the child for medical, psychiatric, or other treatment at an appropriate facility on an in-patient basis if, at the dispositional hearing provided for in section 16-2317, the Division finds that confinement is necessary to the treatment of the child. A child for whom medical, psychiatric, or other treatment is ordered may petition the Division for review of the order thirty days after treatment under the order has commenced, and, if, after a hearing for the purpose of such review, the original order is affirmed, the child may petition for review thereafter every six months.

(5) The Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child. The Division shall have the authority to (i) order any public agency of the District of Columbia to provide any service the Division determines is needed and which is within such agency's legal authority and (ii) order any private agency receiving public funds for services to families or children to provide any such services when the Division deems it is in the best interests of the child and within the scope of the legal obligations of the agency.

(6) Terminate the parent and child relationship for the purpose of seeking an adoptive placement for the child pursuant to subchapter III of this chapter.

(b) Unless a child found neglected is also found to be delinquent, he shall not be committed to, or confined in, an institution for delinquent children.

(c) If a child is found to be delinquent or in need of supervision, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process and may order any of the following dispositions which will be in the best interest of the child:

(1) Any disposition authorized by subsection (a) of this section (other than paragraphs (3)(A) and (5) thereof).

(2) Transfer of legal custody to a public agency for the care of delinquent children.

(3) Probation under such conditions and limitations as the Division may prescribe, including but not limited to the completion of parenting classes or family counseling in cases where either or both was ordered by the Division.

(c-1) The Division shall order any child between the ages of 14 and 18 years who is found to be delinquent or in need of supervision to perform a minimum of 90 hours of community service with an agency of the District government or a non-profit or community service organization in accordance with section 24-904(a).

(c-2) When determining what disposition shall be ordered under subsection (c) of this section, the Division shall consider any victim impact statement submitted to the Division and the victim, or the immediate family members of the victim when the victim is a child or when the victim is deceased or incapacitated, shall have the right to make a statement at the disposition hearing. The absence of the victim at disposition shall not preclude the court from holding the hearing.

(c-3) When determining what disposition shall be ordered under subsection (a) of this section, the Division may consider a child's failure to appear at a scheduled hearing.



(d) No child found in need of supervision, as defined by section 16-2301(8), unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children, but shall be released to the child's parent, guardian, or custodian, unless the return of the child will result in placement in, or return to, an abusive situation, or the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.

(e) No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders.

(f) In its dispositional order for a child adjudicated neglected, the Division shall:

(1) Address the matters set forth in section 16-2319(c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within 30 days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division and all parties if it is unable for whatever reasons to provide the services delineated in the plan;

(2) Include a determination of whether:

(A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and

(B) Continuation of the child in the child's home would be contrary to the welfare of the child.

(g) The department or agency to whom the legal custody of a child has been transferred pursuant to subsection (a) of this section shall give notice, which may be oral, of any change in the placement of the child to the child's parent, the child's guardian ad litem and the child's foster parent at least ten (10) days prior to the change in placement, except that in the case of an emergency notice shall be given no later than twenty-four (24) hours (excluding Saturdays, Sundays and legal holidays) after the change. Notice of a change in placement need not be given to the parent when the judge has determined that visitation would be detrimental to the child or the judge has determined that the parent should not be apprised of the child's location. Upon the request of any person entitled to notice under this subsection the department or agency having legal custody of the child shall afford an opportunity for an administrative hearing to review the proposed change in the placement of the child. Except in the case of an emergency, the hearing shall be held and a decision rendered prior to a change in the placement.

(h) Any child who is found to be delinquent for violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 may, in

addition to any other disposition ordered by the court for his supervision, care, and rehabilitation, be ordered to attend classes conducted by the Mayor pursuant to section 48-905.04(c).

(July 29, 1970, 84 Stat. 535, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 407, 24 DCR 3341; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(3), 28 DCR 3081; Apr. 30, 1988, D.C. Law 7-104, § 4(p), 35 DCR 147; May 10, 1989, D.C. Law 7-231, § 26, 36 DCR 492; Jan. 31, 1990, D.C. Law 8-61, § 3, 36 DCR 5798; May 15, 1993, D.C. Law 9-272, § 102, 40 DCR 7967; Mar. 16, 1995, D.C. Law 10-227, § 3(c), 42 DCR 4; Apr. 9 1997, D.C. Law 11-255, § 18(g), 44 DCR 1271; June 27, 2000, D.C. Law 13-136, § 301(e), 47 DCR 2850; Mar. 17, 2005, D.C. Law 15-261, §§ 602(f), 702, 52 DCR 1188; Apr. 24, 2007, D.C. Law 16-306, § 206(c), 53 DCR 8610.)

**Cross references.** — Agency authorization of medical treatment, physical custody of child, see § 4-1303.05.

Delinquent children, placement under compact, see § 4-1424.

**Prior Codifications.** — 1981 Ed., § 16-2320.

1973 Ed., § 16-2320.

**Effect of amendments.** — D.C. Law 13-136 rewrote subsec. (f), which previously read:

"In its dispositional order for a child adjudicated neglected the Division shall address the matters set forth in section 16-2319(c) by accepting, modifying, or rejecting the plan submitted pursuant thereto. If the plan is rejected or major modifications are made, the agency charged with service responsibility shall within thirty (30) days submit to the Division and to all parties a plan which addresses the matters delineated in section 16-2319(b). The agency responsible for providing the services shall promptly report to the Division and all parties if it is unable for whatever reasons to provide the services delineated in the plan."

D.C. Law 15-261 added subsec. (c-2); and rewrote subsec. (d) which had read as follows: "(d) No child found in need of supervision, unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children; except that if such child has previously been found in need of supervision and the Division, after hearing, so finds, the Division may specify that such child be committed to or placed in an institution or facility for delinquent children."

D.C. Law 16-306 added subsec. (c-3).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(d) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 301(d) of the Adoption and Safe Families Emergency

Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(d) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(d) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

For temporary (90 day) amendment of section, see § 206(c) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 206(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 206(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 206(c) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 4-29.** — Law 4-29, the "District of Columbia Uniform Controlled Substances Act of 1981," was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see His-



torical and Statutory Notes following § 16-2316.

**Legislative history of Law 7-231.** — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-61.** — Law 8-61, the “Youth Offender Community Service Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-138, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-84 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-272.** — For legislative history of D.C. Law 9-272, see His-

torical and Statutory Notes following § 16-2307.

**Legislative history of Law 10-227.** — For legislative history of D.C. Law 10-227, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 11-255.** — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-2309.

**Legislative history of Law 13-136.** — For Law 13-136, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-306.** — For Law 16-306, see notes following § 16-1001.

**References in text.** — The “District of Columbia Uniform Controlled Substances Act of 1981,” referred to in subsection (h), is D.C. Law 4-29. Section 505 of the Act is codified at § 48-905.05; however, the reference to § 505(c) of the Act in subsection (h) should probably be to § 504(c) of the Act which is codified at § 48-905.04.

## CASE NOTES

### ANALYSIS

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### Admissibility of evidence.

Hearsay which consisted of second videotaped interview of child's older sister at child advocacy center and foster mother's testimony that child and her older sister told her that child's father touched them inappropriately and engaged in sexual acts with each of them was admissible in hearing to determine father's visitation rights to child, who had been adjudicated neglected; hearsay was admissible in many different hearings brought throughout the neglect process that addressed the issue of a non-custodial parent's right visitation, and adequate safeguards existed to ensure that father had the opportunity to rebut the hearsay. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

Admissibility of hearsay evidence, namely psychologist's testimony in neglected child proceeding describing an incident in which children saw father hit their mother, was sufficiently contested to preserve issue for appellate review, where trial court ruled against objection by father's counsel that because children were prevented from testifying, he would have

no opportunity to inquire directly into accuracy of children's statements to psychologist, but would have impossible task of cross-examining the psychologist about the children's statements. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Psychologist's testimony regarding underlying incidents of domestic violence allegedly witnessed by children was not admissible over hearsay objection in neglected child proceeding as statement affecting medical diagnosis, where psychologist was not the children's treating physician, and her interview with the children was conducted at the government's request solely in preparation for her testimony at the hearing. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Psychologist's testimony regarding children's description of incidents of domestic violence between their parents that they allegedly witnessed was not admissible over hearsay objection in neglected child proceeding under exception for statements of existing emotional condition, where children's did not report their current fear of their father, but described past incidents. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Juvenile courts are not categorically prohibited from admitting victim impact statements at juvenile disposition hearings based on potential for misusing them as evidence signifying need for retribution; rather, juvenile court judges are trusted to recognize the limited relevance of the statements to rehabilitation and to exercise caution in admitting them. In re M.N.T., 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

Statements made by juvenile during custodial interrogation require special caution; juvenile's confession is admissible if voluntary and made after knowing and intelligent waiver of Miranda rights. U.S. Const. Amend. 5; Juvenile Rule 111. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Trial court did not abuse its discretion in termination of parental rights proceeding in precluding child from answering questions about adoption; judge of trial court did not bar all testimony by the child, but did let her answer questions as to how she liked her visit with her mother and how she felt about her mother, court particularly believed the child at issue could be harmed by sense of having had to make final choice herself, and judge had ample testimony before him of child's desire for adoption and ambivalence about renewed unification with her mother. D.C. Code 1981, §§ 16-2320(g), 16-2353(a), (b)(4), 16-2359(f). In re T.W., 623 A.2d 116, 1993 D.C. App. LEXIS 87 (1993).

Testimony by Department of Human Services officials in support proposition that termination of parental rights will enhance prospects

for adoptive placement is not necessary to satisfy requirement for termination of parental rights on ground of neglect that termination promotes timely integration of child into stable and permanent home; however, trial court has discretion to consider testimony from officials about practical plans and realistic expectations for adoptive placement of particular child, and natural parent may offer evidence of obstacles standing between child and adoptive placement. D.C. Code 1981, § 16-2353(b)(1). In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

In determining whether juvenile is child in need of supervision, court may rely only on evidence that is legally admissible. Juvenile Rule 26. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

That school's records, sought to be introduced in child in need of supervision action, had been taken from a business file was insufficient to qualify for business-records exception to hearsay rule where there was no evidence that it was practice of public schools to make such document, nor was there any proof that unidentified maker had personal knowledge of facts set forth in document or that facts had been reported to unidentified maker in some manner by one who had personal knowledge. General Family Rule Q(a). In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

In child in need of supervision action, school document was not shown to be admissible under public-records exception to hearsay rule where no proof was offered that alleged absences recorded in document were within personal knowledge of unidentified reporting official or that document was prepared pursuant to a legal duty. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

Testimony of physicians regarding mental condition of natural mother was not rendered incompetent in proceeding to terminate parental rights, although some time had passed since physicians' encounters with natural mother, where one physician testified that natural mother suffered from chronic paranoid schizophrenia which would never disappear and another physician diagnosed mother's paranoid schizophrenia and his failure to detect chronicity was based not on an affirmative finding but on a failure to inquire into her medical history. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

#### **Adoption.**

Trial judge's failure to expressly apply the criteria set forth in statute regarding termination of parental right in his judgment approving adoption of child over mother's objection did not warrant remand given the emphatic character of the judge's findings "beyond a reasonable doubt" rather than the required "clear and



convincing evidence" and the compelling evidence that the mother offered no realistic alternative to adoption. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

The determination whether a birth parent's consent to the adoption of a child has been withheld contrary to the child's best interest is confided to the trial court's sound discretion. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Statutory best interest of the child standard must be applied in determining whether to grant petition for adoption filed by unrelated persons. D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Child placement agency's role as state actor in adoption process requires that it provide natural father with a certain minimum amount of information concerning his procedural rights in adoption proceeding. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Remand of adoption petition was necessary, where trial court failed to apply best interest standard of adoption statute as interpreted to include presumption in favor of fit natural parent over stranger to child, but instead found that best interest of child warranted adoption due to psychological impact on child from transfer from prospective adoptive parents to natural father. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304(e), 16-309(b)(3). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Trial judge, in adoption case in which natural mother was withholding consent, adequately addressed critical factors identified in adoption statute, even though judge's analysis did not track, or even mention adoption statute, where, in his oral and written conclusions of law, judge correctly framed central issue as whether the adoption petitioner had shown by clear and convincing evidence that natural mother's consent to adoption was being withheld contrary to best interests of child. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Trial judge's failure, in contested adoption petition, to invoke contested adoption statute when he granted adoption decree was not an abuse of discretion, or a substitution of standards governing termination of parental rights for those governing consideration of adoption petitions, even though some of judge's oral and written findings and conclusions appeared in context of termination of parental rights analysis, where judge's oral and written findings demonstrated that he gave careful consideration to physical and mental suitability of child

for adoption and whether the prospective adoptive parent would provide an adequate home and education for the adoptee. D.C. Code 1981, §§ 16-309(b), (b)(1, 2, 4), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Whether to grant an adoption petition over the objection of the natural parent is a matter committed by statute to the discretion of the court, provided it reaches the conclusion, after hearing, that consent to adoption is being withheld contrary to best interests of the child. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

In a contested adoption, the statutory standard necessarily encompasses an inquiry into whether termination of relationship between the child and the natural parents is in the best interest of the child, which is an inquiry properly guided by standards set out in termination of parental rights statute. D.C. Code 1981, §§ 16-309(b)(3), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Statute providing for termination of parental rights for the purpose of seeking an adoptive placement for a child does not require identification of an adoptive parent as a pre-condition to termination. In the Matters of M.D. and B.D., 135 WLR 1193 (Super. Ct. 2007).

#### **Basis for findings.**

Trial court order, requiring Child and Family Services Agency (CFSA) to pay directly to neglected child on his twenty-first birthday, after independent living program in which child had been placed by CFSA closed three weeks prior to his emancipation, apparently relegating child to homeless shelter, \$1,800 in "emancipation funds" which had allegedly been promised child by program, was not "disposition," and thus was not authorized by statute allowing trial court to "make such other disposition as is not prohibited by law" which judge deems to be in the child's best interest. In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

Evidence was sufficient to support finding that middle child was abused by mother, as to justify finding of neglect; middle child had a bleeding cut over her left eye that was caused by her mother's striking her with a broom handle because child could not locate her school uniform, child had an abrasion on her arm that had been inflicted by her mother two days earlier when she would not sit still while her hair was being groomed, and child had scratch marks around her neck, again stemming from her mother's physical punishment during a previous hair grooming session. In re Kya, 857 A.2d 465, 2004 D.C. App. LEXIS 447 (2004).

While the trier of fact is entitled to draw a vast range of reasonable inferences from evidence in a juvenile delinquency proceeding, he or she may not base an adjudication of guilt on

mere speculation. In re As.H., 851 A.2d 456, 2004 D.C. App. LEXIS 308 (2004).

A single snapshot of a family's existence may be vivid and evocative for purposes of determining if children are neglected, and sometimes it may suffice, but usually it is an unsatisfactory basis on which to make the important judgments required in a child neglect proceeding. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Findings of child neglect with respect to each named party can serve to assist the court in entering the dispositional order. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

That father was not incarcerated on date neglect petition was originally filed did not preclude finding that father was unable to discharge his responsibilities to and for his children because of incarceration, as ground for neglected child ruling, where government moved to amend petition to include fact of incarceration after father's parole was revoked. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Balancing test a trial court must undertake in order to preclude a parent from examining her child in a neglect proceeding includes three case-specific factual determinations: (1) the trial court must make a finding on the record that testifying would create a risk of serious harm to the child; (2) if the trial court finds that the child is at risk of serious harm from having to testify, the court must consider whether the risk can be alleviated by means short of prohibiting the testimony altogether; and (3) after taking into consideration the risk of harm to the child and the possibility of ameliorative measures, the court must evaluate the probative value of the child's testimony and the parent's concomitant need for it. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In order to justify a trial court's finding in a neglect proceeding that requiring a child to testify would create a risk of serious harm to the child, the finding must not be based solely on generic concerns; rather, the finding must rest upon concrete evidence individualized to the particular child and, although expert testimony may not always be required, it will often be the best evidence of such a risk. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

A neglect finding should not result where a capable parent or guardian shares physical custody and responsibility for the child with the addicted parent and there is no evidence of actual or imminent harm from the addicted parent, even though the parent is chemically dependent. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Fact that process of surrendering child into custody of Child and Family Services Agency

(CFSA) was initiated at the behest of CFSA, rather than by child's caretaker, was of no legal significance in finding child to be neglected, where mother was unable to care for child, and caretaker stated her intention to discontinue caring for him because of the demands of rearing her own children. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Decision to temporarily deny putative father's request for visitation with neglected minor child was not an abuse of discretion; trial court rested its decision on its well-grounded concern that child was emotionally unstable and not ready to handle the intrusion into his life of his long-absent father, and that decision was a reasonable one with a firm and undisputed factual predicate. In re J.W., 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

Trial judge's failure in juvenile delinquency case to order an individualized education program does not, as a matter of law, render a subsequent disposition improper. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

In deciding whether to terminate judicial involvement in child neglect proceeding two years after mother's paramour, who was living with mother and child, had sexually abused child, proper focus for trial court was not whether child had learned to "cope" with situation in which paramour would be authorized to exercise unsupervised parental authority over child, but rather whether paramour had reformed his conduct sufficiently to ensure child's safety and welfare. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Trial court's disposition of abused child must be based upon and drawn from firm factual foundation. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

In determining whether child's welfare requires intervention of state, trial court's inquiry must go beyond simply examining the most recent episode. In re A.S., 643 A.2d 345, 1994 D.C. App. LEXIS 92 (1994).

Neglect statute contemplates that in a neglect proceeding trial judge will make independent determination of proper disposition in best interest of child based, at least, on reading predisposition report. D.C. Code 1981, §§ 16-2319, 16-2320. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Disposition judge could properly consider implications for public safety in determining whether to release juvenile to community only a few months after juvenile's commitment to treatment facility, where juvenile had sprayed vehicle occupied by human beings with automatic weapons fire while on probation in drug case and on pretrial release in another armed offense. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).



Disposition judge who refused to allow early release of juvenile could reasonably consider need to persuade juvenile that rational and proportional relationship existed between conduct and consequences and that premature release of juvenile might convey message that use of automatic weapons was not serious. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Racial considerations, whether overt or covert, form impermissible basis for decision as to disposition of juvenile. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Protection from public from crime is appropriate consideration in determining whether and for how long a period judge may keep behind bars a juvenile who has been found guilty, on his plea, of serious armed offenses. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Section does not require that a finding of neglect be entered against a natural parent, as opposed to a stepparent, guardian, or other custodian, before a disposition can be entered. In re S.G., 116 WLR 1149 (Super. Ct. 1988).

The finding requirement of subsection (a)(4) could be satisfied not only by a written finding but also by an express oral finding made on the record at the time of the dispositional hearing. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

### **Commitment.**

Best interest of the child standard permeates statutory framework of neglect statute, and under plain language of provision providing for termination, best interest of the child must be considered when court acts to terminate commitment of child. D.C. Code 1981, §§ 16-2310(a), 16-2320(a)(5), 16-2323(d), (d)(2). In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

In deciding to terminate commitment for care of neglected child after child reached age of 18 years but before he attained age of 21 years, trial court was required to determine whether commitment was no longer necessary to safeguard child's welfare and whether termination was in child's best interest and could not base such decision solely on interests and safety of public. D.C. Code 1981, §§ 16-2301, 16-2310(a), 16-2320(a), 16-2322, 16-2323(d), (d)(2), 30-401. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

### **Construction and application.**

Trial court lacked statutory authority, under statute allowing trial court to "make such other disposition as is not prohibited by law" that judge deems to be in the child's best interest, to order Child and Family Services Agency (CFSA) to pay \$1,800 in emancipation funds directly to neglected child on his twenty-first birthday; order requiring CFSA to pay emanci-

pation funds was not a "disposition." In re D.K., 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

In child neglect cases, the trial court's primary concern must be with the best interests of the child, and the neglect statute is a remedial enactment which must be liberally construed to permit the court to carry out its obligations as *parens patriae*. In re C.W., 916 A.2d 158, 2007 D.C. App. LEXIS 15 (2007).

Once an environment without abuse or neglect has been secured for the child and his family, the trial court can no longer use child neglect statute, providing that the Family Division may make such other disposition as is not prohibited by law and as the Division deems to be in the best interests of the child, to aid the family. In re C.W., 916 A.2d 158, 2007 D.C. App. LEXIS 15 (2007).

The child neglect statute is a remedial enactment designed to protect the welfare of neglected and abused children, and it must be liberally construed to achieve that end. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In civil cases alleging child neglect, the focus is on the best interest of the child, rather than the culpability of the parents; thus neglect statutes authorizing state intervention should be liberally construed to enable the court to carry out its obligations as *parens patriae*. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

In proceedings on a neglect petition, the court must act in the child's best interest and may not expose the child to serious risk of harm. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Civil neglect statute, which codifies the best interest standard, is remedial enactment designed to protect welfare of neglected and abused children, and it must be liberally construed to achieve that end. D.C. Code 1981, § 16-2320. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Under child neglect statute, best interest of child is the paramount consideration, and child neglect statute should be liberally construed in a manner that would enable court to carry out its obligations as *parens patriae*. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Neglect statutes authorizing state intervention on a child's behalf are remedial, and they should be liberally construed to enable the court to carry out its obligations as *parens patriae*. D.C. Code 1981, §§ 16-2301, 16-2320. In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

Statute governing the dispositional order for a child adjudicated neglected does not apply to changes in placement status from third-party to committed status, or from committed to third-party status in neglect proceedings, because these status changes do not affect the

determination of who has legal custody of the neglected child, and do not change the disposition of the child. In the Matter of A.S., 131 WLR 2249 (Super. Ct. 2003).

Juvenile Form 7 is a "combination" disposition order for commitment under subsections (a)(5) and (c)(2) of this section. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

### **Custody of children.**

#### **— In general.**

In a child neglect proceeding, a parent's right to custody may not be overridden in the absence of persuasive evidence that the children's well-being requires that custody be placed elsewhere. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

Mother's live-in paramour did not have legal right to keep mother's three children in home; mother acquiesced in placement of children with father of two of them as she failed to appeal ruling placing children with father, paramour's claims to father's two children was inferior to father's claims, and court's decision to keep children together was reasonable. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

A parent's right to custody is not absolute. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

A parent's interest in retaining custody of his children is both legally cognizable and substantial, and may not be overridden in the absence of persuasive evidence that the children's well-being requires that custody be placed elsewhere. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Trial court did not have authority to remove child custody from mother and award permanent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed. D.C. Code 1981, §§ 11-1101, 16-911, 16-914,

16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, the child continued in that status, and there was no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child would go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

Where nine-year-old girl had previously been adjudged a "dependent child," the trial court had the authority under its continuing jurisdiction over the child to hear and determine the question of whether custody of the child should be given to the natural mother, who, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, or to the foster parents with whom the child had lived virtually all her life. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

Trial court was correct in holding that the best interest of the child was the controlling factor in its decision as to whether to give custody of the child to her natural mother, who, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, or to the foster parents with whom the child had lived virtually all her life, despite contention that court ignored the interest of the mother in its decision. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

#### **— Public agencies, custody of children.**

The trial court does not have the power to direct placement or order probation as a means of directing treatment after a juvenile delinquent has been committed to a public agency. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

Trial court order committing mother's three children to the custody of the Department of Human Services (DHS) was not an abuse of discretion; evidence supported trial court finding of neglect. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

Following the issuance of the disposition order by the Family Division of the Superior Court, only interim custody of a juvenile transfers to the Department of Human Services; exclusive custody vests in the Department only upon execution of the conditions of the order.



D.C. Code 1981, § 16-2320(a)(5), (c)(1). In re A.A.I., 483 A.2d 1205, 1984 D.C. App. LEXIS 549 (1984).

#### **Delinquency proceedings, generally.**

Trial judge's decision in juvenile delinquency case to enter, prior to reviewing an individualized education program, a disposition that ordered residential placement at hospital was not an abuse of discretion or otherwise improper, as neither the juvenile justice laws nor the IDEA required such a review. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

In making a disposition in a juvenile delinquency case, the trial court may consider the safety of the community as well as the juvenile's needs, and an informed exercise of discretion will rarely be disturbed on appeal. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Trial court in juvenile delinquency case properly entered a disposition that ordered residential placement at hospital, even though it ordered, but did not review, an individualized education program, as court performed an exhaustive review of other reports and evaluations prior to making the disposition. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

While education is clearly a component of any best interest of the child analysis conducted at dispositional phase of a juvenile delinquency proceeding, it is the whole child for whom the trial judge must find the best care and supervision. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Juveniles committed to institutions on findings of delinquency are not routinely committed for treatment reflecting lack of mental competency, and thus, fact that juvenile is in "treatment center" does not inherently suggest "red flag" regarding juvenile's competency to testify. D.C. Code 1981, § 16-2320(c). *Hammon v. United States*, 695 A.2d 97, 1997 D.C. App. LEXIS 95 (1997).

Family court was entitled to commit juvenile adjudged delinquent to residential treatment program without first allowing Department of Human Services to evaluate juveniles and recommend proper placement to court; family court made placement decision based upon redispotion report prepared by division of social services, and Department of Humans Services subsequently acquiesced to placements. D.C. Code 1981, §§ 16-2319, 16-2319(a), 16-2320. In re M.C.S., 555 A.2d 463, 1989 D.C. App. LEXIS 39 (1989).

Where juvenile has obviously limited ability to discern link between conduct and consequences, disposition judge may reasonably include that rehabilitation of delinquent may necessitate teaching him that conduct does have consequences and that results of antiso-

cial behavior are predictable. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Statute which prohibits commitment of child found to be juvenile delinquent to penal or correctional institution for adult offenders does not preclude a commitment to juvenile facility of person previously held in adult facility who was found to be "child" for purpose of juvenile delinquency proceedings. D.C. Code 1981, §§ 16-2301, 16-2302(c), 16-2313(d), e), 16-2320(e); Criminal Rule 52. In re M.R., 525 A.2d 614, 1987 D.C. App. LEXIS 350 (1987).

#### **Discretion of court.**

Even though the proper disposition of a neglected child is committed to the sound discretion of the trial court, that discretion must rest upon correct legal principles. In re A.R., 950 A.2d 667, 2008 D.C. App. LEXIS 268 (2008).

Trial court abused its discretion in sua sponte deciding to close neglect case after subject child, who had been committed to the care of the Child and Family Services agency (CFSA), reached her eighteenth birthday without making a finding as to child's best interest. In re A.R., 950 A.2d 667, 2008 D.C. App. LEXIS 268 (2008).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court, and the exercise of that discretion is reviewable only for abuse. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

Child neglect statute vests the trial court with considerable latitude in crafting a disposition designed to reunite the family while safeguarding the well-being of the child. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

The trial court's informed discretion in deciding in a neglect proceeding on whether to preclude examination of a competent child witness by the child's parent requires that the trial court's determination be based upon and drawn from a firm factual foundation. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In neglect proceedings, the judges of the trial court have broad authority to take whatever steps are necessary to protect the well-being of neglected and abused children. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Although the authority to make certain dispositions is similar in delinquency and neglect cases, a judge in a neglect proceeding has

broader authority than a judge in a delinquency proceeding because the disposition statute permits a judge in a neglect case to make such other dispositions as the court deems to be in the best interest of the child and to order any public agency of the District of Columbia to provide any service the court determines is needed. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

Deferring any custody decision of neglected child pending the outcome of the investigation into putative father's suitability and the outcome of paternity test was not an abuse of discretion. In re J.W., 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

Judicial discretion in denying a parent the right to visit his child must be founded upon correct legal principles, and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

For purposes of determining whether the trial court abused its discretion in proceedings on a child neglect petition, an informed choice among the alternatives requires that the trial court's determination be based upon and drawn from a firm factual foundation; it is an abuse of discretion if the stated reasons do not rest upon a sufficient factual predicate. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Proper disposition of an abused child is committed to the sound discretion of the trial court, and the trial court's exercise of discretion is reviewable only for abuse. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Judges of trial court have broad authority to take whatever steps are necessary to protect well-being of neglected and abused children. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Child neglect statute vests trial court with considerable latitude in crafting a disposition designed to reunite family while safeguarding well-being of child. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Court is authorized to grant motion to modify or terminate order of commitment if it finds such action necessary to safeguard welfare of juvenile or public interest. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Judge who retained veto power over release was authorized, after considering recommendations of Department of Human Services and expert who examined juvenile, to reject testimony if he found it unpersuasive. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Under subsection (a)(5) the Family Division of the Superior Court is authorized to order the District, through its executive agencies, to provide suitable housing or, in the alternative, financial resources sufficient to secure suitable private housing to reunite parents with children who reside in a foster home because of a

prior neglect proceeding. In re D.I., 113 WLR 1293 (Super. Ct. 1985).

Although this section provides the court with the authority to order the District of Columbia to place a family in adequate housing, such authority should be exercised sparingly, only in cases where it is clear that immediate reunification of the family is in the best interests of the child, and where the parent has unequivocally and consistently, over time, demonstrated an entitlement to this extreme remedy. In re T.B., 120 WLR 1089 (Super. Ct. 1992).

### Dismissal.

Dismissal under juvenile court rule providing for dismissal in interest of justice and welfare of child is within trial court's sound discretion, subject to review for abuse of discretion. Juvenile Rule 48(b). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Trial court did not abuse its discretion in denying juvenile's motion to dismiss pursuant to rule providing for consideration of unnecessary delay when deciding whether to dismiss petition, despite claim that trial court relied upon irrelevant consideration that no single prosecutor had been more than negligent in failing to petition case within year of complaint and gave undue weight to seriousness of offense, i.e., second-degree murder; in refusing to dismiss, trial court considered reasons for delay, interest of justice, welfare of child, seriousness of offense charged, and juvenile's prior adjudications, all of which were proper factors, and court considered no improper factors. Juvenile Rule 48(b). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Family division has authority to dismiss a delinquency petition at dispositional hearing if the court finds that child who committed a "delinquent act" is, nonetheless, not "in need of care and rehabilitation" and thus is not a "delinquent child." Juvenile Rules 48(b), 48 comment; D.C. Code 1981, §§ 16-2301(6, 7), 16-2320(c). In re C.S. McP., 514 A.2d 446, 1986 D.C. App. LEXIS 406 (1986).

### Due process.

Mother's due process rights were not violated because she was not personally served with notice of proceeding on petition by her child's foster mother to adopt the child; magistrate judge ordered notice by posting only after noting unusually substantial efforts that had been expended by investigator from Child and Family Services in trying to serve mother personally, and, although investigator did not attempt to serve notice on mother by registered mail, he contacted family members, and made numerous phone calls and in-person visits both to mother's last known address and her sister's address, where mother was reportedly staying, and he was told by a woman who identified



herself as the mother's mother that the mother had been made aware of the hearing as a result of his efforts. In re N.N.N., 985 A.2d 1113, 2009 D.C. App. LEXIS 649 (2009).

In hearing to determine father's visitation rights to neglected child, father's objection to admission of hearsay that consisted of second videotaped interview of child's older sister at child advocacy center and foster mother's testimony that child and her older sister told her that child's father touched them inappropriately and engaged in sexual acts with each of them was insufficient to preserve for appellate review father's claim that trial court's reliance on such hearsay violated his right to due process, where father never raised a due process objection below, or sought to call child or her older sister as witnesses. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

Father failed to preserve for appeal issue of whether his due process rights were violated due to trial court's failure to postpone civil child abuse proceedings against him until parallel criminal proceedings were exhausted; father's motion to dismiss made no reference to due process nor requested postponement until his then-pending criminal appeal was exhausted. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Permitting court-appointed guardian ad litem to file motion to terminate parental rights following adjudication of neglect does not violate due process; once child has been adjudicated neglected, right of family privacy and integrity has already been subordinated to that extent to District's right and duty to protect mother and children through judicial determinations of their interest and, at that point, no valid right to family integrity is breached merely by allowing guardian ad litem, who may be uniquely familiar with facts of case and parties, to initiate and pursue termination. D.C. Code 1981, § 16-2354(a); U.S.C. Const.Amends. 5, 14. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

Rights of natural parent regarding child are subject to due process protection, but those rights are not absolute and must give way before child's best interests. U.S. Const.Amend. 5. In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

Child placement agency violated unwed father's constitutional right to procedural due process by failing to use due diligence to find father in order to provide timely service of required immediate, official notice of adoption proceedings; agency did not obtain addresses of father's relatives, did not tell court of other possible addresses for father, did not attempt to update information upon being told by mother that father's address could have changed and upon learning from father that he was about to move to another country. (Per Ferren, J., with

Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father's "opportunity interest" in developing relationship with his child remained intact, and preference for custody by father arose in adoption proceeding, despite natural father's failure to take action with respect to child after learning that mother desired to place child for adoption, where notice given to father of legal procedures involved in adoption process and child placement agency's role in those procedures was insufficient, father had not been given immediate notice of adoption petition, and agency did not undertake diligent efforts to ascertain father's whereabouts. (Per Ferren, J., with Chief Judge concurring separately.) U.S.C. Const.Amends. 5, 14; D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

To satisfy unwed father's constitutional right to due process prior to allowing adoption of child, child placement agency would have to engage in due diligence to locate father. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const.Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

When extinction of parental rights is at stake, due process requires that the trial court consider the quality of the relationship between the natural parent and the child. D.C. Code 1981, § 16-2353(b)(3); U.S. Const.Amends. 5, 14. In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Natural parent's interest in preserving parent-child relationship is a "commanding" factor in determination of what process is due to natural parent in termination proceeding. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Failure of trial court to grant a continuance sua sponte to allow physician to form an opinion of natural mother's ability to care for infant did not deny natural mother due process of law in proceeding to terminate parental rights where physician could not have predicted what his prognosis would be in six months and other physicians testified that natural mother was a chronic paranoid schizophrenic. U.S.C.A. Const.Amend 14. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

The statutes and rules regulating juvenile delinquency proceedings in the District of Columbia provide adequate means of insuring that any mentally ill child offender receives care and treatment similar to that provided mentally ill criminal defendants, and thus statute which prohibits interposition of the defense of insanity by a child charged with delinquency does not violate due process and equal protec-

tion. D.C. Code §§ 16-2315 et seq., 16-2315(d), 16-2319, 16-2320(a)(4); D.C. Code SCR, Juvenile Rule 32(b), (c)(2); U.S. Const. Amend. 5. In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

### Extensions.

Court ordering extension of juvenile commitment beyond statutory period must specify whether action is being taken for protection of juvenile or for protection of public interest. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

### Foster parents.

Trial court did not abuse its discretion, in child protection proceedings, in declining to remove children from foster care and place them with caretakers chosen by their mother, where clear and convincing evidence supported finding that such action would be against children's best interests; neither proposed caretaker wanted to adopt children, neither was prepared to assume responsibility for children given their lack of qualifications as caretakers and children's special physical, mental, and emotional needs, and neither maintained stable household. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Foster parent, whose foster children were removed from her home for abuse and neglect, was not entitled to hearing to challenge agency's refusal to place other children in her home; foster parent's home, which was in Maryland, was never licensed by a District of Columbia agency, so as to render District of Columbia's licensing procedures for youth residential facilities applicable, and any constitutional right as foster parent was limited to opportunity to challenge removal of particular children. D.C. Code 1981, §§ 3-802(a), 3-808(a)(1), 16-2320(g). Minnis v. District of Columbia Dep't of Human Servs., 712 A.2d 1030, 1998 D.C. App. LEXIS 118 (1998).

### Habeas corpus.

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. 18 U.S.C. § 2241 et seq.; D.C. Code §§ 11-1551, 16-2301, 16-2320(b); U.S. Const. Amends. 5, 6. Brown v. Yeldell, 487 F.2d 1210, 1973 U.S. App. LEXIS 6801 (C.A.D.C. 1973).

### In general.

Primary goal of juvenile system is protection of child through treatment and rehabilitation, which is best achieved by prompt disposition directed toward effectuating that goal. In re

D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

In cases involving children, whether issue is neglect, custody or termination of parental rights, overriding statutory goal is best interest of child, which are of paramount importance. D.C. Code 1981, § 16-2320(a). In re J.A., 601 A.2d 69, 1991 D.C. App. LEXIS 349 (1991).

### Jurisdiction.

Once the trial court acquired personal jurisdiction over the mother in the proceeding that led to a determination that her children were neglected, it retained personal jurisdiction over the mother for the duration of the process of attempted family reunification and permanency planning, which culminated in the adoption proceeding in which a final adoption decree was entered. In re N.N.N., 985 A.2d 1113, 2009 D.C. App. LEXIS 649 (2009).

Family court had subject matter jurisdiction to enter neglect finding against father, even though court had already found child to have been neglected under terms of mother's stipulation; parents made separate strategic decisions and took different procedural paths, with mother stipulating to neglect and father pursuing stipulated trial, but this tactical divergence did not affect court's jurisdiction to adjudicate allegations made in neglect petition, and crux of allegations concerned father's conduct, with stipulated findings of neglect against mother being derivative in that mother admitted that she failed to protect children from father. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Only when a disposition order of the Family Division of the Superior Court is issued and is implemented by the Department of Human Services does the Division relinquish its authority to make a new disposition, and the Department can assume exclusive supervisory responsibility over the juvenile. D.C. Code 1981, § 16-2320(a)(5), (c)(1). In re A.A.I., 483 A.2d 1205, 1984 D.C. App. LEXIS 549 (1984).

Family Division of the Superior Court had jurisdiction to order a particular placement for a delinquent juvenile after the conditions of its original commitment order were not executed by the Department of Human Services. D.C. Code 1981, §§ 16-2320(a)(5), (c)(1), 16-2324(a)(3). In re A.A.I., 483 A.2d 1205, 1984 D.C. App. LEXIS 549 (1984).

Superior Court was without authority to revoke juvenile offender's aftercare status following his commitment to the legal custody of the social rehabilitation administration and to order his placement at residential center, after court found that juvenile offender had committed two curfew violations. D.C. Code §§ 16-2301 to 16-2338, 16-2301(21), 16-2320(a), (a)(5), (c), 16-2327; D.C. Code (1967 Ed. Supp.



IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

### **Least restrictive environment.**

Under the neglect statute, the "best interest of the child" standard governed trial judge's placement of neglected child; judge, in his discretion, could consider the "least restrictive environment" for the neglected child in determining what was in his best interest, but there was no statutory mandate requiring that the "least restrictive environment" standard be applied in neglect case. D.C. Code 1981, § 16-2320. In re D.R., 718 A.2d 149, 1998 D.C. App. LEXIS 187 (1998).

### **Medical care.**

Trial court, in hearing regarding petition by Child and Family Services Agency (CFSA) for overruling of mother's refusal to consent to continued administration of psychotropic medication to minor child, who had been adjudicated as neglected and whose legal custody had been held by CFSA, was required to conduct analysis to determine whether clear and convincing evidence existed to support decision that child's best interests were served by taking medication, as would be required to support order overruling mother's denial of consent, rather than delegating to CFSA its responsibility as *parens patriae* to determine whether or not it was in child's best interest to continue medication, under statute providing trial court with authority to commit neglected children for psychiatric treatment on inpatient basis; trial court did not refer to child's best interests in order. In re G.K., 993 A.2d 558, 2010 D.C. App. LEXIS 210 (2010).

Psychotropic medication did not constitute "ordinary medical care," within meaning of statute providing that possession of legal custody of minor child included responsibility to provide ordinary medical care to child, and thus authority to provide consent to administration of such medication to child upon parental loss of legal custody presumptively constituted "residual parental right," within meaning of statute providing that parents would retain rights normally associated with parenthood upon transfer of legal custody, subject to trial court's responsibility as *parens patriae* to intervene if necessary to protect child's best interest, with result that Child and Family Services Agency (CFSA), which had obtained legal custody of child that had been adjudicated as neglected, lacked authorization to provide consent for administration of child's inpatient psychotropic medication; trial court had not appointed someone other than parents to serve as child's guardian. In re G.K., 993 A.2d 558, 2010 D.C. App. LEXIS 210 (2010).

Trial judge considered juvenile delinquent's best interest when entering disposition that

ordered residential placement at hospital, even though judge did not review an individualized education program; juvenile was not committed solely for educational reasons, in light of fact that delinquency was based on her carrying a butcher knife to school to threaten a classmate, and juvenile was in need of a disposition that addressed her unique medical situation as well as any psychological problems. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Trial court properly exercised jurisdiction over matter involving medical guardian ad litem's request for issuance of "do not resuscitate" order with respect to neglected child who was born prematurely, who suffered from serious medical problems, and who was in comatose state, given the adjudication of child as a neglected child, trial court's role as *parens patriae*, disagreement of biological mother and putative father as to whether child should be resuscitated in event of cardiac arrest or respiratory distress, serious medical condition of child, and the best interests of the child concept. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Trial court's exercise of its discretion as *parens patriae* was essential in case in which medical guardian ad litem requested issuance of "do not resuscitate" order with respect to neglected child who was born prematurely, who suffered from serious medical problems, and who was in comatose state, where District government took no position on resuscitation issue and biological mother and putative father had fundamental disagreement concerning resuscitation. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

In light of facts that neglected child who was born prematurely and was in comatose state was described as "neurologically devastated," that child felt and reacted to pain and discomfort but not to other stimuli, that child had no reaction to surrounding environment, that child could not give or receive love or express a view, and that some resuscitation techniques engendered substantial pain and discomfort, trial court could issue requested "do not resuscitate" order with respect to child based on guidance from medical experts and consistent with best interests of child, rather than abiding by biological mother's wishes. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

In cases involving minor respondents who have lacked, and will forever lack, the ability to express preference regarding their course of medical treatment, and where parents do not speak with same voice but disagree as to proper course of action, the best interests of the child standard shall be applied to determine whether to issue "do not resuscitate" order with respect

to child. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

An infant child, with life-threatening heart condition, whose parents refuse to allow corrective surgery, may be adjudicated a neglected child under paragraph (9)(B) of § 16-2301 and committed for medical treatment under subsection (a) of this section. In re Adam L., 111 WLR 25 (Super. Ct. 1983).

#### **Mentally ill children.**

If the Family Division of the Superior Court finds that child offender was mentally ill at the time of the offense and is mentally ill at the time of disposition and is therefore in the need of care and treatment, it would be a clear abuse of discretion to confine the child to an institution where appropriate care and treatment is not available; but if the Division finds that the child was mentally ill at the time of the offense but at time of disposition is fully restored to mental health, Division would be required to determine whether in view of all the facts and circumstances the child is or is not in need of care and treatment. D.C. Code §§ 16-2315(a), (c)(1), 16-2317(c, d), 16-2320(a)(4), 16-2321(b, c). In re M., 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

Delinquent children committed to in-patient psychiatric facilities are entitled to protections similar to those afforded civilly committed adults who seek periodic judicial review of their hospitalization under D.C. Code § 21-501 et seq. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Juvenile Form 5 is the type of order which a commitment under subsection (a)(4) would generate. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

#### **Neglect proceedings, generally.**

Trial court's compensatory award, following a child neglect review hearing, for alleged past wrongs by the District of Columbia, in that foster care funds paid by District's Child Family Services Agency (CFSA) to ward's foster parents were not distributed to ward or used for her benefit, could not reasonably be viewed as a measure to provide ward with a neglect-free or abuse-free environment and, therefore, the District's alleged negligence did not proximately cause an injury compensable under child neglect legislation. In re C.W., 916 A.2d 158, 2007 D.C. App. LEXIS 15 (2007).

Following child neglect review hearing at which no testimony was taken and no opportunity for cross-examination was provided, trial court's order requiring District of Columbia to pay compensation to ward of District's Child Family Services Agency (CFSA) for District's alleged negligence, in that foster care funds paid by CFSA to ward's foster parents were not

distributed to ward or used for her benefit, without providing District with protections to which it was entitled in such an action, was "prohibited by law" within meaning of statute providing that Family Division may make such other disposition as is not "prohibited by law" and as Division deems to be in best interests of child. In re C.W., 916 A.2d 158, 2007 D.C. App. LEXIS 15 (2007).

The constitutional presumption against State intervention into a parent-child relationship exists only so long as a parent adequately cares for his or her children; in the final analysis, the State has the right and duty to protect minor children through judicial determinations of their interest. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Parallel proceedings against father for civil child neglect and criminal child sexual abuse, arising out of same incident, did not jeopardize fairness or integrity of father's child neglect hearing. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Whereas a stipulation of child neglect concedes the legal conclusion, a stipulated trial admits to the existence of certain facts without conceding a legal outcome. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Although a neglect proceeding is remedial and focuses on the situation of the child rather than of the parent, the rights of the parent are not to be overridden lightly. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court was precluded in neglect proceeding from deferring to opinion of children's guardian ad litem that the children would suffer "an emotional impact" from testifying before their mother and her boyfriend, and thus from refusing to let mother call children as witnesses and examine them concerning children's hearsay reports of physical mistreatment, which mother denied and no one else had witnessed, in the absence of factual findings that the probable harm to the children from having to testify substantially outweighed mother's need for their testimony; guardian ad litem's mere proffer was not evidence or specific enough as to the nature and severity of the emotional injury that the children might suffer to enable the court to evaluate the danger. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Two vitally important interests are at stake when a parent seeks to compel a child's testimony in a neglect proceeding: on the one hand, parents have a fundamental liberty interest in the care, custody, and management of their child; on the other hand, the paramount consideration in neglect proceedings is the best interest of the child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

A trial court has the power to protect a child from the harmful effects of forced testimony in



child neglect proceedings; in most cases the court can exercise that power effectively and appropriately by imposing reasonable conditions and restrictions on the conduct and scope of the child's examination, and when such conditions and restrictions are sufficient to safeguard the child's welfare, there is no warrant for the court to go further and preclude the child's examination altogether, but in the extreme case, where a demonstrated risk of serious psychological or emotional harm to the child is not adequately mitigable by other means and substantially outweighs the parent's need for the child's testimony, the trial court has discretion to exclude the child as a witness. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Although a parent's right to visitation is an important, natural, and legal right, that right may be denied if it would be detrimental to the child's best interests. In re J.W., 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

Decisive consideration is the best interests of the child, and judges of the trial court have broad authority to take whatever steps are necessary to protect the well-being of neglected and abused children. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

At time of stipulation that children were neglected due to death of their mother, their maternal grandmother was not their custodian, and thus, statute making death of a parent insufficient to establish neglect unless custodian has been deemed neglectful or abusive did not apply to require that grandmother be adjudicated neglectful before stipulation could be accepted, even if grandmother cared for children in loco parentis for a time after the mother's death, where children were being cared for by their grandfather, pursuant to court order, at time of stipulation. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

Where a custodian or another parent or guardian is in place, the death of a parent does not automatically render a child "neglected," unless that other parent, guardian or other custodian is adjudged to have neglected or maltreated the child. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

In child neglect cases, as in all proceedings affecting future of a minor, decisive consideration is best interests of child. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Best interests of child is standard in neglect cases. D.C. Code 1981, § 16-2320(a). In re L.J.T., 608 A.2d 1213, 1992 D.C. App. LEXIS 147 (1992).

While intrafamily proceedings may be relevant in neglect proceeding, their focus is not necessarily same as focus of neglect proceeding, thus, before relying on intrafamily proceeding, trial judge in neglect proceeding must ascertain whether, in light of challenges, there is proper

basis for relying on intrafamily findings. D.C. Code 1981, §§ 16-2319, 16-2320. In re M.D., 602 A.2d 109, 1992 D.C. App. LEXIS 11 (1992).

Failure to identify adoptive parents for child does not preclude termination of parental rights in neglect proceeding. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

In neglect proceedings, mother's status was no longer relevant as to reasonable efforts to prevent removal or return child home and "contrary to welfare" findings, once first permanency hearing was held and permanency goal changed from reunification to adoption. In the Matter of A.S., 131 WLR 2249 (Super. Ct. 2003).

Statute governing the dispositional order for a child adjudicated neglected applies to dispositional hearings following a fact-finding hearing after the child has been removed from the parents or legal guardian. In the Matter of A.S., 131 WLR 2249 (Super. Ct. 2003).

Superior Court would construe the 'best interest' standard in a manner that afforded a custodial preference to a "fit" parent, as relying solely on the neglect statute and a prior neglect adjudication would not give proper weight and deference to mother's rights in contested case in which great-grandmother sought legal custody of minor child. In the Matter of A.S., 131 WLR 2249 (Super. Ct. 2003).

#### Notice.

Although letter informing foster parent of agency's intent to remove foster children from her home was undated, it was sufficient to establish that foster parent received more than ten days notice of intended removal; letter stated that a meeting had been scheduled to discuss the matter with her on a date that was more than ten days before the removal, and foster parent filed formal request for hearing more than ten days before the removal. D.C. Code 1981, § 16-2320(g). Minnis v. District of Columbia Dep't of Human Servs., 712 A.2d 1030, 1998 D.C. App. LEXIS 118 (1998).

Notification of father's attorney by social worker, less than five business days before dispositional hearing, of availability of predisposition report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was insufficient to meet due notice requirement of child support statute; while five-day prefiling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter which required different factual and legal focus. D.C. Code 1981, §§ 16-916.1, 16-2319(b),

16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of predispositional report, less than five business days before dispositional hearing, was inadequate to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Defect in initial notice that issue of child support would be addressed in dispositional hearing was not cured by trial court's denial of motion to vacate child support award without prejudice to father filing motion for reconsideration setting forth specific factual reasons why support order should be reduced or vacated; not only was notice inadequate but court never afforded father opportunity for hearing on child support mandated by statute at any time after it could be assumed reasonably that he had received due notice of addition of child support issue to the proceedings. D.C. Code 1981, § 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Information which child placement agency furnished to unwed father failed to provide minimum notice required by due process to enable father to assert his right to custody of child at meaningful time and in meaningful manner, where letters sent by agency to African father did not inform father of his basic right to seek custody of child and of his right to participate at court hearing that would be scheduled to determine permanent placement of child, but rather merely told father that he had right to acknowledge or deny paternity and that effort had to be made to inform father of plans for adoption, and provided father with adoption consent forms. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father was denied his procedural rights under statute when court failed to provide him with "immediate" notice of prospective adoptive parents' filing of petition to adopt his son. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code 1981, §§ 16-304, 16-306. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Practice of Family Division of providing notice to interested parties only upon issuance of show cause order in adoption proceeding violates statute commanding that due notice of pending adoption proceeding be sent "immediately" to natural parents. (Per Ferren, J., with Chief Judge concurring separately.) D.C. Code

1981, § 16-306(a). H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Unwed father did not have responsibility to keep child placement agency informed of his current address if he wished to have prompt notice of adoption proceeding, where there was no indication whatsoever in any information which agency sent to father that there was pending judicial proceeding, let alone that agency and father were "parties" to that proceeding, but instead father only knew that agency was seeking his consent to adoption of his child. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

Relinquishment form provided to mother by Department of Human Services, which did not contain notice that revocation within ten-day statutory period must be contained in "verified writing," did not give mother sufficient notice of her right to automatically revoke relinquishment of her parental rights. D.C. Code 1981, § 32-1007(c, g), (g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

#### **Parens patriae.**

Parents have fundamental rights at stake in both neglect and termination of parental rights (TPR) proceedings and both types of proceedings require the trial court to act as *parens patriae* to protect the child from harm: in a TPR, the parent faces the possibility of a permanent termination of the parent-child relationship; in a neglect proceeding, the parent faces the possibility of serious state interference in that relationship, interference that could lead to a temporary or permanent loss of custody. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Both termination of parental rights (TPR) proceedings and neglect proceedings similarly require the trial court to consider the rights of the parent and the well-being of the child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

As *parens patriae*, the trial court must act to protect the child's welfare in a neglect proceeding and protect the child from serious risk of harm. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

The trial court's obligation, as *parens patriae*, to protect the child begins well in advance of any adjudication of neglect, and requires the court to monitor the situation carefully and promptly take steps to protect the child if her physical or emotional welfare is endangered. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In neglect proceedings, the trial court's role is to act as *parens patriae*, and this means that the court must act to protect the best interest of the child. D.C. Code 1981, § 16-2320(a)(4, 5). In



re D.R., 718 A.2d 149, 1998 D.C. App. LEXIS 187 (1998).

In a child neglect case, court must act as *parens patriae* in child's interest, and must not expose her to serious risk of harm. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

In its role as *parens patriae* in neglect proceedings, court must act to protect best interest of child; neglect proceedings are initiated to protect child's best interests where parent is unwilling or unable to do so, and, following adjudication of neglect, court is required to enter dispositional order meeting best interest of child standard. D.C. Code 1981, §§ 16-2301, 16-2320. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

#### **Payment for care.**

District of Columbia has obligation to pay costs of medical treatment of one whom District has involuntarily civilly committed, whether or not individual is resident, until such time as another person or jurisdiction assumes responsibility for those costs. D.C. Code 1981, § 21-545. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

#### **Placement of children.**

Trial court lacked authority to direct placement or order probation for juveniles adjudicated delinquent after the juveniles had been placed in custody of Department of Human Services until age 21. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

There is preference toward placing children with their natural parents. D.C. Code 1981, § 16-2320(a). In re L.J.T., 608 A.2d 1213, 1992 D.C. App. LEXIS 147 (1992).

Statute precludes placement of a child adjudicated to be a child in need of supervision (CINS) in a facility for delinquent children unless there has been a second CINS adjudication. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Trial court could properly order that child be placed with maternal grandmother, rather than her mother or father upon finding that stepfather had abused the child, even though neither mother or father was found to have neglected the child, where child had three half-siblings who were also presently in custody of maternal grandmother, child indicated to social worker that her preference was to remain with her grandmother, child had never lived with her father, father's presumptive rights as parent had been accorded requisite consideration,

and child would not lose her entitlement to father's military benefits as a result of placing child with grandmother. D.C. Code 1981, §§ 16-2301(9)(A), (12), 16-2320(a)(3)(C). In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

Where child's father was not a custodial parent, placement of child at some home other than his does not implicate subsection (a)(3)(C) of this section. In re S.G., 116 WLR 1149 (Super. Ct. 1988).

#### **Plea withdrawal.**

Ruling on plea withdrawal motion in delinquency proceeding was not "disposition," within meaning of statute listing specific "dispositions" that trial court could order in delinquency proceedings, and thus, "best interest" standard which applied to such dispositions did not apply to court's consideration of plea withdrawal motion. D.C. Code 1981, § 16-2320(c); Juvenile Rule 32(e). In re J.E.H., 689 A.2d 528, 1996 D.C. App. LEXIS 304 (1996).

#### **Presumptions and burden of proof.**

In child neglect proceedings, government bears the burden of proving neglect in all its elements by a preponderance of the evidence. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

When a biological parent declines to consent to a proposed adoption, the prospective adoptive parent must ordinarily show by clear and convincing evidence that consent is being withheld contrary to the child's best interest. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

A chemically dependent parent is not neglectful of her child per se. In re W.T.L., 825 A.2d 892, 2002 D.C. App. LEXIS 801 (2002).

In a child neglect proceeding, the District has the burden of proving by a preponderance of the evidence that a child is neglected, as statutorily defined. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

An inference of child neglect is dependent upon the rationality of the connection between the facts proved and the ultimate fact presumed. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

In child neglect proceeding, government is required to prove its case by a preponderance of evidence. In re A.S., 643 A.2d 345, 1994 D.C. App. LEXIS 92 (1994).

#### **Protective supervision.**

Statute defining "protective supervision" granted trial court authority to revoke protective supervision order regarding care of child at any time while order was in effect, and fact that provision was of definitional nature was not determinative. D.C. Code 1981, § 16-2301(19). In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

Even if trial court did not have express statutory authority to revoke protective supervision order regarding care of mother's child, best interests of child would support court's revocation given detailed statement of reasons by trial judge, procedural safeguards afforded to mother by fact-finding hearing, and past record of neglect of child. In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

That Congress chose to confer on court power to revoke protective supervision orders through its definition of protective supervision, rather than by enacting separate section, had no effect on statutory scheme as a whole. In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

#### **Provision of services, generally.**

In juvenile delinquency proceedings, as distinct from abuse and neglect cases, the trial court no longer has statutory authority to direct the placement or future treatment of juveniles who have been committed to a public agency, such as the Department of Human Services (DHS), although the court still has the responsibility of crafting a disposition that is in the best interest of the child. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

The trial court in a juvenile delinquency proceeding always has the option of placing a child on probation if it believes that probation is in the best interest of the child and the community. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

If a child in a juvenile delinquency proceeding is placed on probation, the trial court may ensure through its probationary authority that the child receives the treatment the court deems is necessary. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

Provision of immediate public housing to child and child's family was not "service" within meaning of statute allowing family court, in child neglect proceeding, to order public agency to provide neglected child with needed service that is within agency's legal authority; agency which provided public housing was entirely separate from agencies providing assistance to families and children who were victims of child abuse and neglect, contrary interpretation would undermine rules, provisions, and function of that agency, and action exceeded statute's goal of addressing and remedying unsafe domestic environment. D.C. Code 1981, § 16-2320(a)(5). In re G.G., 667 A.2d 1331, 1995 D.C. App. LEXIS 228 (1995).

Statute permitting family division of superior court to order any public agency of the District of Columbia to provide any service the division determines is needed could not serve as a justification for orders which were attempted modifications of original disposition and made approximately one year later since the statutory authority existed only with re-

spect to the initial disposition or commitment order. D.C. Code 1978 Supp. § 16-2320(a)(5)(i). In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

Family division of superior court did not have authority to order the Department of Human Resources to pay for specific treatment program for delinquent juvenile, while court retained custody of juvenile on probation, since family division can order services from agency only pursuant to transfer of legal custody to agency. D.C. Code §§ 3-120, 16-2301(21), 16-2320(a)(5)(i). In re J., 431 A.2d 587, 1981 D.C. App. LEXIS 301 (1981).

Petition seeking to obtain preferential treatment and access to public housing, in that the provision of such housing would expedite reunification of the family as a family unit was not the jurisdictional authority of the Court under subdivision (a)(5). In re O.P., 151 WLR 1557 (Super. Ct. 1995).

#### **Purpose.**

Determination of the facts and attendant legal consequences in analyzing child neglect petition is part and parcel of the trial court's obligations as *parens patriae*, and helps fulfill the remedial goals of the statutory scheme. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Overriding goal of the District of Columbia Juvenile Act is to promote the care and rehabilitation of the juvenile. D.C. Code 1981, §§ 16-2320(a)(5), (c)(1), 16-2324(a)(3). In re A.A.I., 483 A.2d 1205, 1984 D.C. App. LEXIS 549 (1984).

#### **Rehabilitation, generally.**

Where disposition judge has not restricted commitment, rehabilitation of committed juvenile is relegated to expertise of executive branch of government. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

#### **Release.**

Superior court had authority to issue order conditionally releasing child to her mother, while caretakers retained legal custody, as court had considerable latitude in crafting disposition designed to reunite family while safeguarding well-being of child. D.C. Code 1981, §§ 16-2320(a), 16-2323(d). In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

By specifically retaining veto power over release at disposition, trial judge retained exclusive authority to determine when juvenile's release from disposition was appropriate. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Trial court which retained veto power over release was not obligated to release juvenile when Department of Human Services was of opinion that release was appropriate in best



interest of juvenile. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Where juvenile received many benefits of rehabilitative juvenile system, including treatment as juvenile, relatively short disposition, confidential proceedings, and avoidance of far more severe consequences which he would have encountered if tried as an adult, juvenile judge's decision not to allow premature release was compatible with rehabilitative care of juvenile system. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

## Review.

### — Harmless error, review.

Trial court's act in erroneously concluding from judgment and commitment order that father's prior sodomy conviction involved a victim who was a minor did not constitute reversible error in hearing to determine whether father had sexually abused neglected child and thus be prohibited from having visitation rights with child; while prior conviction was used to impeach credibility of father's character witness, trial judge did not consider testimony of character as significant in determining whether there was strong evidence of sexual abuse committed by father, in that witness knew nothing about the fact that father had been convicted of serious criminal act and had been imprisoned for a substantial period of time. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

In hearing to determine father's visitation rights to neglected child, admission of hearsay which consisted of second videotaped interview of child's older sister at child advocacy center and foster mother's testimony that child and her older sister told her that child's father touched them inappropriately and engaged in sexual acts with each of them did not constitute plain error; father was given ample opportunity to test the reliability of the hearsay presented, and the government's case did not rest upon hearsay alone, as both child and her older sister had engaged in eroticized behavior, which was circumstantial evidence corroborating their statements that they had been sexually abused. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

Even assuming stipulation that children were neglected due to death of their mother was somehow infirm, any error in accepting it did not prejudice grandmother, and thus was not reversible error, even though she did not sign stipulation and was only named party in original neglect petition, where government dropped neglect petition against her as a result of stipulation, she had opportunity to contest her alleged neglect at disposition hearing at which she sought custody, and trial court based neglected status on death of children's mother

and impecuniosity of their grandfather who had court-ordered custody pending resolution of matter. In re V.K., 766 A.2d 958, 2000 D.C. App. LEXIS 258 (2000).

Error, if any, when family division of superior court continued commitment of neglected children, nunc pro tunc, was harmless where family division merely ratified de facto custody arrangement when Department of Human Services retained custody of neglected children after expiration of order committing children to Department's custody. D.C. Code 1981, §§ 16-2320, 16-2322. In re O.A., 548 A.2d 499, 1988 D.C. App. LEXIS 207 (1988).

### — In general.

Sentencing court, in imposing guidelines sentence that took into account defendant's juvenile adjudications as criminal history, demonstrated that it correctly understood the scope of its discretion, in assessing those offenses and concluding that nothing in the record overrepresented defendant's likelihood to commit further crimes, and thus failure to depart downward was not reviewable. U.S.S.G. § 4A1.3, p.s., 18 U.S.C. United States v. Johnson, 28 F.3d 151, 1994 U.S. App. LEXIS 16771 (C.A.D.C. 1994).

Loss of videotapes of the interviews taken of child and her older sister at child advocacy center did not deny father meaningful appellate review of trial court's ruling prohibiting him from having visitation with child, who was adjudicated neglected, based on father's act in committing sexual abuse upon child, where through diligent effort the parties reconstructed the taped interviews using a variety of sources, and the complete transcript of the four-day hearing included every observation and argument made by any of the parties regarding the contents of the tapes. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

Father, who was prohibited from having visitation with his neglected child based on finding that father sexually abused child and her older sister, failed to preserve for appellate review his claim that due process requires that a parent be able to cross-examine his child accuser before the right of visitation may be denied, where father never attempted to call child or her older sister as witnesses. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

Trial court admission of hearsay testimony from child therapist, who testified that youngest child told her that she witnessed her father physically abusing her mother, did not constitute plain error during neglect proceedings; oldest child testified that she and her younger sibling were both present during incidents of abuse. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

In a child neglect case in which fundamental rights of children and their parent are at issue, the Court of Appeals is reluctant, unless compelled to do so by statute or binding precedent, to dispose of an appeal on technical grounds not related to the merits. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

When reviewing a neglect adjudication, the relevant focus for the court is the children's condition, not the parent's culpability, because the purpose of the neglect statute is to protect the child from harm. In re T.T.C., 855 A.2d 1117, 2004 D.C. App. LEXIS 416 (2004), amended by 868 A.2d 859, 2005 D.C. App. LEXIS 38 (D.C. 2005).

An appellate court, in a juvenile delinquency appeal, will reverse on evidence insufficiency grounds only when the Government has failed to produce evidence upon which a reasonable mind might fairly find guilt beyond a reasonable doubt. In re As.H., 851 A.2d 456, 2004 D.C. App. LEXIS 308 (2004).

Although appellate review of sufficiency of the evidence is deferential in a juvenile delinquency appeal, an appellate court has the obligation to take seriously the requirement that the evidence must be strong enough that a jury behaving rationally really could find it persuasive beyond a reasonable doubt. In re As.H., 851 A.2d 456, 2004 D.C. App. LEXIS 308 (2004).

Father failed to preserve for appeal issue of whether child neglect disposition against him effectively punished him for exercising his Fifth Amendment privilege against self-incrimination; by virtue of father's request for stipulated trial, no incriminating question was ever posed, nor any incriminating document demanded, that would have afforded father opportunity to invoke privilege, and, even if record could be read to support father's invocation of privilege, it was never tested in trial court, given that no questions were ever asked. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Upon reviewing a trial court's determination to terminate parental rights, an appellate court may not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Contention by District of Columbia that the trial court was without statutory authority to direct the placement or future treatment of juvenile adjudicated a delinquent represented an exceptional situation, which would be subject of appellate review, though District did not object during the disposition hearing to provisions of the trial court order, given that representations were made that there were over thirty pending cases invoking judicial orders similar to the one complained of in the "lead case" before the appellate court and that the trial court had been apprised of and rejected

the District's contentions. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

Trial court's denial of mother's motion for reconsideration of order terminating her parental rights cured defect in her appeal occasioned by her having filed notice of appeal prior to ruling on motion for reconsideration. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Assuming issue had been preserved for review, no evidentiary hearing on putative father's request for visitation with neglected minor child was required because, absent any question about child's emotionally fragile state, there was no material factual issue that needed to be resolved. In re J.W., 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

Mother's live-in paramour had a reputational interest sufficient to provide him with standing to challenge finding that he abused mother's daughter, although he could not complain of the disposition of mother's three children in the absence of an appeal by mother. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Mother abandoned her appeal of trial court's order, in child neglect proceedings, reducing the frequency of mother's visits with child placed in foster care to once a month, where mother failed to address the issue in either her appellate brief or in a reply brief. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

Trial court abused its discretion by terminating judicial involvement in child neglect proceeding two years after mother's paramour, who was living with mother and child, sexually abused child; there had been no complaints of misconduct after that one incident of abuse, but paramour had failed to comply with court's stay-away order, failed to discontinue his use of cocaine, failed to appear for court-ordered urine tests, failed to write report for probation officer, and failed to cooperate with referral for individual therapy, and paramour had never been evaluated to determine his potential for further abuse. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Appropriate disposition of defendant's appeal of two delinquency adjudications, one for simple assault and one for assault with intent to commit robbery, after Court of Appeals found that simple assault merged into assault to commit robbery, was simply to affirm unvacated portion of judgment, where defendant, tried as a juvenile, had not received separate sentence for each offense but rather a single judgment of delinquency, where period of time for which defendant had been committed to Department of Human Services had expired, and where defendant at time of appeal was 21-years old and thus no longer subject to jurisdiction of juvenile court. D.C. Code 1981,



§§ 16-2303, 16-2320(c), 22-501, 22-504; Juvenile Rule 32(b). In re T.H.B., 670 A.2d 895, 1996 D.C. App. LEXIS 6 (1996).

Record evidence did not support mother's claim that trial judge, in ruling on motion to terminate parental rights, unfairly drew "adverse inferences" from mother's refusal to take stand when called as witness by guardian ad litem; trial judge's written findings of fact recited and relied upon testimony of other witnesses, including three social workers and educational specialist and, at most, court could say that judge was aided in reaching particular findings by mother's failure to controvert evidence adduced in children's behalf. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

To determine sufficiency of findings, Court of Appeals examines whether findings are detailed enough to allow reviewing court to conclude that decision followed rationally from findings of fact, and is consistent with requirements of law. In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Appeal challenging temporary placement of child in need of supervision (CINS) in detention facility, on ground that statute prohibited placement of children adjudicated in need of supervision in a facility for delinquents, was not rendered moot by child's subsequent placement in group home, considering that limited time that child remains in detention facility while awaiting placement in a foster home or an institution prevents full litigation of issue before cessation of challenged action. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Trial court's order for temporary detention of child adjudicated in need of supervision (CINS) at detention facility was not reversible error, even though facility contained delinquent youths, and statute does not permit placement of CINS children in a facility for delinquent children, since facility was not a facility maintained for adjudicated and committed delinquent youths, although due to judicial orders, half of the population was in that status on date of hearing; rather, receiving home was a facility designed, and generally used for detained youth prior to trial, and court's order imposed strict conditions for separation of child from any delinquents held at facility. D.C. Code 1981, § 16-2320(d). In re W.L., 603 A.2d 839, 1991 D.C. App. LEXIS 314 (1991).

Juvenile court did not completely fail to exercise its discretion or resort to impermissible considerations in refusing to allow juvenile to be released from disposition which did not exceed statutory limit, where juvenile's record included charges for assault with intent to kill while armed, possession of cocaine, driving without a permit, assault with a deadly weapon, malicious destruction of property, and

where juvenile was charged with two more counts of assault with intent to kill while armed and seven weapons offenses arising out of incident which occurred while he was on probation. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Rule which precludes review of lawful sentences applies to dispositions in juvenile delinquency cases. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Appellate court may review juvenile case in which judge fails altogether to exercise discretion or applies legally impermissible criteria which undermined proceedings. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Appeal from order terminating natural father's parental rights had to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources with instructions to seek prompt adoptive placements was not timely. D.C. Code Court of Appeals Rules, rule 4, pt. II(a). In re C.I.T., 369 A.2d 171, 1977 D.C. App. LEXIS 422 (1977).

Where natural mother of nine-year-old girl who, when the child was four days old, consented to commitment of the child to the child welfare division of the department of public welfare, was seeking to regain and not retain custody of the child, where the mother for nine years made no real effort to regain custody and where in that period of time the child had found a "warm and happy home" with the foster parents and she preferred to remain in that home, the trial court did not err in deciding that, subject to further order of the court, the child should remain with the foster parents. D.C. Code §§ 11-1551, 16-2301(9), 16-2308. In re N.M.S., 347 A.2d 924, 1975 D.C. App. LEXIS 284 (1975).

The authority to review an order under subsection (a)(4) includes power to affirm, and thus implicitly to set aside, disposition order providing for confinement at an in-patient treatment facility. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

#### — Standard of review.

When the Court of Appeals evaluates an appellant's claim that the evidence is insufficient to support a finding of neglect, it must consider the evidence in the light most favorable to the government, giving full play to the right of the judge to determine credibility, weigh the evidence, and draw reasonable inferences. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

When reviewing a neglect adjudication the Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re

T.T.C., 855 A.2d 1117, 2004 D.C. App. LEXIS 416 (2004), amended by 868 A.2d 859, 2005 D.C. App. LEXIS 38 (D.C. 2005).

A neglect adjudication will only be set aside if it is plainly wrong or without evidence to support it. In re T.T.C., 855 A.2d 1117, 2004 D.C. App. LEXIS 416 (2004), amended by 868 A.2d 859, 2005 D.C. App. LEXIS 38 (D.C. 2005).

In evaluating claims of evidentiary insufficiency in juvenile delinquency appeals, an appellate court views the record in the light most favorable to the Government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re As.H., 851 A.2d 456, 2004 D.C. App. LEXIS 308 (2004).

An appellate court will assess whether the evidentiary inquiry made by the trial court in a child neglect proceeding was adequate to permit a truly informed decision, and if the inquiry was superficial, an appellate court may remand for further proceedings. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Deference is due to a trial court's determination of abuse or neglect in child neglect proceeding and an appellate court will not second-guess the trial judge on a very difficult call. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In evaluating on appeal whether the government, in a child neglect proceeding, met its burden of proving neglect in all its elements by a preponderance of the evidence, an appellate court must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Court of Appeals must determine whether the trial court's decision to terminate a parent's rights is supported by clear and convincing evidence, and it must be satisfied that the possibility of an erroneous judgment does not lie in equipoise between the two sides. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

If a claim of evidentiary insufficiency is raised on appeal in a child neglect proceeding, the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

On appeal from a judgment finding a child to be neglected, the Court of Appeals must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Deference is due to the trial court's determination of child abuse or neglect, and the Court of Appeals will not second-guess the trial judge

on a very difficult call. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court; the exercise of that discretion is reviewable only for abuse. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Best interests of the child standard, rather than substituted judgment standard, applied with respect to trial court's determination, as *parens patriae*, of whether to issue "do not resuscitate" order for neglected child who was born prematurely, who suffered from serious medical problems, and who was in comatose state, where biological mother and putative father disagreed as to resuscitation issue, child was infant, child was never healthy, and child issued no oral or written directives as to medical matters or formed any opinions about anything, let alone a value system. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Trial court applied the appropriate clear and convincing evidence test, rather than relying primarily on factual findings from neglect adjudication which were made in accordance with preponderance of evidence standard, in determining to issue "do not resuscitate" order in the best interest of a neglected child who was born prematurely, who suffered from serious medical problems, and who was in comatose state. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Abuse of discretion standard applied to trial court's determination to issue "do not resuscitate" order in the best interest of a neglected child who was born prematurely, who suffered from serious medical problems, and who was in comatose state. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Standard of proof required for issuance of a "do not resuscitate" order in the best interests of a child is clear and convincing evidence. D.C. Code 1981, § 16-2320(a)(5). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Court of Appeals will reverse trial court's determination of where the best interest of neglected child lies for placement purposes only for an abuse of discretion. D.C. Code 1981, § 16-2320(a)(4, 5). In re D.R., 718 A.2d 149, 1998 D.C. App. LEXIS 187 (1998).

Proper disposition of abused child is committed to sound discretion of trial court, and trial court's exercise of discretion is reviewable only for abuse. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Trial court abuses its discretion when it rests its conclusions on incorrect legal standards. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).



Court of Appeals reviews trial court's judgment for termination of parental rights only for abuse of discretion. D.C. Code 1981, § 16-2353(a). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Clearly erroneous rule was applicable to trial court's findings of fact and conclusions of law in adoption proceeding, even though findings and conclusions were adopted practically verbatim from proposed findings and conclusions submitted by potential adoptive parents and child placement agency, where minor changes by trial court indicated that findings and conclusions ultimately represented judge's own determinations. (Per Ferren, J., with Chief Judge concurring separately.) H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).

The Court of Appeals may reverse a trial court's determination of where the best interests of the child lie, in an adoption case in which the natural mother is withholding consent to the adoption, only when the trial judge has abused his discretion. D.C. Code 1981, § 16-309(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

In reviewing trial court's termination of parental rights of noncustodial parents, reviewing court must determine whether trial court's finding is supported by clear and convincing evidence on the record. D.C. Code 1981, § 16-2353(a). Appeal of U.S.W., 541 A.2d 625, 1988 D.C. App. LEXIS 83 (1988).

Clear and convincing evidence that termination of parent-child relationship is in best interest of child is such evidence as will produce in the mind of trier of fact a firm belief or conviction as to facts sought to be established. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Terminations of parental rights must be based upon clear and convincing evidence. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

### **Revocation of probation.**

Juvenile offender who had been committed to legal custody of social rehabilitation administration was not on probation so as to permit superior court to revoke his aftercare status under statutory provisions regarding probation revocation. D.C. Code § 16-2320(a), (a)(5). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

### **Right to counsel.**

Any attempt to surrender parental rights through voluntary relinquishment while mother remains under court's neglect jurisdiction must be regarded as a "critical stage" under statute affording parent right to counsel in neglect proceeding. D.C. Code 1981, § 16-

2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Hearing was required to determine whether mother who signed form relinquishing her parental rights was aware of her attorney's availability and knowingly and voluntarily waived right to use him. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Mother who was under court supervision in neglect proceeding had right to be represented by counsel when she executed form relinquishing her parental rights. D.C. Code 1981, § 16-2304(b)(1). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

Court of Appeals must uphold trial court's factual finding that defendant knowingly and intelligently waived his Miranda rights if there is substantial evidence in the record to support such findings. U.S. Const. Amend. 5. In re C.L.W., 467 A.2d 706, 1983 D.C. App. LEXIS 460 (1983).

Finding that juvenile knowingly and intelligently waived his Miranda rights was supported by substantial evidence which indicated that juvenile, who, at the time he was questioned, was four days short of his 16th birthday, and after being advised of his rights, stated both orally and in writing that he understood what his rights were, that juvenile had been arrested in the past and at no time during encounter with police showed any signs of emotional disturbance or requested that his mother or attorney be present or indicated at any time that he wanted to stop answering questions, and that juvenile stated to police that he was talking to them in effort to "beat my charge." U.S. Const. Amends. 5, 6. In re C.L.W., 467 A.2d 706, 1983 D.C. App. LEXIS 460 (1983).

### **Sufficiency of evidence.**

Evidence was sufficient to support the trial court's finding that mother's children were neglected based on being without proper parental care or control; oldest child testified that she, and not mother, took the initiative to protect mother, herself, and younger child from father's violent behavior, expert testified that oldest child was forced to take on the role of "parental child" and be the caretaker of the family, oldest child testified that she and younger child witnessed domestic violence between parents on numerous occasions, and younger child was diagnosed with post-traumatic stress disorder, depression, and suicidal ideation. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was sufficient to support the trial court's finding that child was neglected based on child being without proper parental care or control, even though child did not testify at neglect hearing; father withdrew his motion to have child testify during hearing, child's older

sibling testified that she and child witnessed violence between father and mother on numerous occasions, father admitted that he slept in the same bed as child, child gave father a highly sexualized poem, and experts testified that the familial roles in family were severely confused. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Evidence was sufficient to support the trial court's finding that child was neglected based on abuse or abandonment by father, even though child did not testify at hearing; child's older sibling testified that child was present during numerous occasions when father abused mother, and that child often hid under the covers in her room during the abuse. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Grounds stated by trial court in its order barring mother from having any further visitation with children, which were that final plan for children was adoption, such that further visitation might interfere with children's bonding with prospective adoptive parents, and that children's therapist had recommended that no further visitation be permitted, were insufficient to support denial of all visitation between mother and children, in child neglect proceeding; fact that permanent plan for children was adoption did not automatically warrant ban on any visitation in the interim, and conclusory nature of therapist's report recommending no further visitation was not commensurate with profound effect ban on visitation would have on lives of children and their mother. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

Evidence was not sufficient to support juvenile's adjudication of delinquency for robbery; sole evidence that implicated juvenile in robbery offense was alleged victim's testimony, who in identifying juvenile at photographic array almost a month after robbery, and again in court four months later, stated that her level of certainty that defendant was robbery perpetrator was seven or eight on a scale of one to ten. In re As.H., 851 A.2d 456, 2004 D.C. App. LEXIS 308 (2004).

Absent any direct evidence, such as testimony by the children or other eyewitnesses, that children were present during instances of domestic violence, trial court's finding that father mentally abused his three children based on their having witnessed father's pattern of abusing their mother over a period of time before her death was not supported by the evidence, in neglected child proceeding. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

While psychologist was entitled to rely on children's out-of-court statements regarding underlying incidents of domestic violence they witnessed to form a basis for her expert opinion

that they suffered long-term trauma, trial court could not rely on such statements to prove the truth of what was being asserted, namely, that children actually saw their father beat their mother. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Testimony of children's mother's sister concerning mother's swollen lips, contusions, and scratches was insufficient to show that children's father was responsible for the beating or that children were present when beatings occurred, and thus did not support finding in neglected child proceeding that children witnessed domestic violence or that their long-term trauma was the result of what they saw. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Petition for civil protection order alleging that children's father beat their mother did not support finding in neglected child proceeding that children witnessed domestic violence or that their long-term trauma was the result of what they saw, where nothing in petition indicated that children were present when mother alleged she was beaten. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Evidence that father did not provide for his children financially, had been incarcerated for most of their lives, and faced two to 12 more years in prison supported finding that father was unable to discharge his responsibilities to and for his children because of incarceration, as ground for neglected child ruling. In re C.A.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

Evidence was sufficient to support finding that mother failed to protect her children from boyfriend's abuse and could not explain her daughter's injuries, so as to justify a finding of neglect; collective testimony of witnesses, including police detective, pediatric resident at children's medical center, a pediatrician, a therapist and social worker, a teacher, and children's natural father, indicated that there were bruises on daughter's buttocks, that she had stated that mother's boyfriend spanked her on her bare buttocks in a public park, that daughter told mother about the spanking and mother said "good, I'm going to spank you again," and that son said, after he had accidentally urinated on the wall, that mother's boyfriend made him lick up the urine. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Evidence was sufficient to support finding that child was neglected by his mother; mother rarely visited the child, either simply to spend time with him or to ensure that he was receiving the proper care, and caretaker testified that mother failed to provide for the child, although mother had financial means, and mother testified to her persistent use of alcohol and heroin, which caused mother to be repeatedly incarcerated and out of contact with the caretaker and



the child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Evidence was sufficient to support finding that mother's live-in paramour used unreasonable force against mother's daughter; daughter described two instances of physical abuse by paramour, as well as injuries to her head and face, doctor's testimony corroborated the physical injuries daughter described, mother's testimony supported her daughter's account in key respects, demonstrating how paramour struck daughter and that daughter was bleeding as a result, and paramour gave apparently false exculpatory statements. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence was sufficient to support finding that actions by mother's live-in paramour constituted child abuse, although adolescent daughter was not seriously injured; there was evidence that paramour dragged daughter by her hair with enough force to pull her hair out from its roots leaving her scalp exposed, that he kicked or stepped on her back, and that a few days later he struck her in the face and left her bleeding. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence was insufficient to support finding that daughter's brothers were in imminent danger of being abused due to physical abuse of daughter by mother's live-in paramour and mother's tolerance of it, and thus did not support removal of the brothers from mother's home; gravamen of the evidence was to the effect that brothers were happy in their mother's home and doing well, and there was only evidence of two instances of abuse of daughter. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

Evidence of chronic and unexplained sexual injuries in young children while in custody of their parents was sufficient to justify inference of neglect; doctor testified that manipulation of genitals in children was "chronic," indicating that both children were abused on more than one occasion, mother's only explanation was that wounds were caused from bike riding, which theory that was disavowed by doctor's testimony, and doctor also observed that children's wounds healed after they were removed from parents' care. In re C.C.J., 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Provision of disposition order in neglect proceeding, prohibiting visitation of child by father until therapist advised otherwise or there was a further order on that issue, was not abuse of discretion, where trial court relied upon a therapist's recommendation that trial court described as "unambiguous," record showed that child referred to father as "the devil" and was

fearful of him, and trial court made clear during hearing on disposition order that father was free to contact therapist to discuss matter of visitation. In re L.D.H., 776 A.2d 570, 2001 D.C. App. LEXIS 141 (2001).

Evidence was sufficient to support adjudication of juvenile for theft of bicycle tire; juvenile offered to buy the bicycle tire from victim, juvenile followed victim to where he left his bicycle, after victim discovered his bicycle was missing juvenile ran from the police, and when juvenile was caught he possessed victim's tire. In re D.D., 775 A.2d 1096, 2001 D.C. App. LEXIS 136 (2001).

Evidence supported trial court's finding that mother's paramour abused child; court expressly credited child's testimony that paramour told child to take off her clothes, told her to touch his "private part," and pulled child down and choked her. D.C. Code 1981, § 16-2301(9)(A). In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Evidence supported trial court's finding that mother's paramour was acting in loco parentis over child whom he sexually abused; court found that paramour resided in same home with child and her brother, supervised children every day after school, accompanied them on weekend outings, and occasionally purchased food and clothes for them. In re S.L.E., 677 A.2d 514, 1996 D.C. App. LEXIS 114 (1996).

Evidence was insufficient to support finding that 25-day-old child was neglected by being deprived of proper parental care, control or subsistence; although physician testified that child, who was brought to hospital waiting room by his parents when his mother sought treatment for back pain, was clinically dehydrated, evidence indicated at most that child missed from one to three feedings, no evidence suggested he had not been properly cared for prior to incident, and incident occurred while mother was suffering from severe back pains. D.C. Code 1981, § 16-2301(9)(B). In re A.S., 643 A.2d 345, 1994 D.C. App. LEXIS 92 (1994).

Testimony of sons, ages 12 and 8, was not required for termination of mother's parental rights; record was replete with references with respect to boys' opinions from statements made to others concerning relationship with mother and foster parents, and judge made findings about boys' opinions in discussion of psychologist's testimony. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Trial judge's finding that any relationship between natural mother and her child during visits was insufficiently developed to justify denial of contested adoption petition was supported by clear and convincing evidence, including evidence that the visits began after 19 months of neglect, mother completely failed to attempt to secure a stable home environment,

and child had lived with proposed adoptive parent during past year, even though visits reflected stirrings of interest by mother in raising child. D.C. Code 1981, § 16-2353(b), (b)(3). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Trial court's express finding that two-year-old child was suitable for adoption at present time in view of age and health characteristics was sufficient to satisfy statutory requirement for termination of parental rights on ground of neglect that termination would promote timely integration of child into stable and permanent home, despite lack of testimony by Department of Human Services officials that termination would enhance prospects for adoptive placement; finding was based on child's age and physical and emotional development. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Clear and convincing evidence supported termination of parental rights of noncustodial natural father of child who was born with fetal alcohol syndrome and fetal hydantoin syndrome, resulting in special needs for occupational and physical therapy; trial court had determined that father was unable to meet child's special needs and that appropriate adoptive family, capable of providing the structure, consistency, support, and understanding necessary for child's development, would be substantially harder to find given legal risk posed by father's residual parental rights. D.C. Code 1981, § 16-2353(a, b). Appeal of U.S.W., 541 A.2d 625, 1988 D.C. App. LEXIS 83 (1988).

In proceeding to terminate parental rights, there was considerable evidence that natural mother's mental condition left her incapable of caring for her child within the foreseeable future. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In proceeding to terminate parental rights, record did not support inference that social worker was biased against natural mother or that her tense relationship with natural mother influenced her testimony. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In delinquency proceeding, evidence that victim was shot during juvenile's robbery of another victim in same car, together with juvenile's confession, was sufficient to support finding of juvenile's involvement in offense and adjudication as delinquent. D.C. Code 1981, §§ 16-2317, 16-2319, 22-501, 22-2401, 22-2901, 22-3202. In re C.L.W., 467 A.2d 706, 1983 D.C. App. LEXIS 460 (1983).

On basis of record, infant child was shown to be neglected by a preponderance of the evidence. D.C. Code §§ 16-2301, 16-2320. In re K., 429 A.2d 1331, 1981 D.C. App. LEXIS 259 (1981).

#### **Termination of parental rights.**

The termination of parental rights is a dras-

tic remedy, and may be ordered only upon a showing of clear necessity. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court did not abuse its discretion, in child protection proceedings, in concluding that termination of mother's parental rights was warranted, despite children's apparent attachment to mother and despite mother's contention that older children's ages and special needs made them unadoptable, where mother was unfit parent and children were found to be attractive, friendly, affectionate, and in good relationships with their respective foster parents. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

In a child protection proceeding, when there still may be value in retaining at least the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, termination of parental rights may be unwarranted if there is no reasonable likelihood of adoption because of the absence of any substantial good to be achieved for the child. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Generally, trial judges have considerable discretion in applying statutory factors in deciding whether to enter order for termination of parental rights. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

In termination proceedings, choice between having conversation with child in chambers and putting child on witness stand is within judge's sound discretion. In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Disposition of neglected child does not terminate parental rights and is subject to continuous review hearings until child is 21 years of age; nevertheless, temporary placement of neglected child can substantially interfere with natural parent's right to develop relationship with child. D.C. Code 1981, §§ 16-2320, 16-2322, 16-2323. In re J.F., 615 A.2d 594, 1992 D.C. App. LEXIS 274 (1992).

Termination of parental rights proceeding can occur either as part of adoption proceeding or as dispositional alternative in neglect proceeding. D.C. Code 1981, § 16-2320(a)(6); Neglect Rule 18(c). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Mother was not necessarily precluded from effectuating timely oral revocation of her relinquishment of her parental rights following Department of Human Services' failure to include in its relinquishment form notice of revocation rights calling for verified writing within ten days. D.C. Code 1981, § 32-1007(c, g), (g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

After mother signed form relinquishing her parental rights, which did not advise her that revocation of relinquishment must be in writ-



ing, hearing was required to determine whether mother had been advised of verified writing requirement by someone else and had subsequently decided to revoke relinquishment and effectively communicated that decision. D.C. Code 1981, § 32-1007(g)(1), (h). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

In determining whether to terminate parent-child relationship, trial court must consider child's need for continuity of care and timely integration into stable and permanent home; physical, mental, and emotional health of all persons involved to degree that child's welfare is affected, decisive consideration being needs of child; quality of interaction and interrelationship of child and parents, siblings, caretaker, and foster parents; and child's opinion, to extent feasible. D.C. Code 1981, § 16-2353(a), (b). In re D.R., 541 A.2d 1260, 1988 D.C. App. LEXIS 64 (1988).

In proceeding to terminate parental rights, trial court was not obliged to consider mother's interest in isolation from interests of child. D.C. Code 1981, § 2353(a), (b). In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In proceeding to terminate parental rights, what is relevant to trial court's decision is quality of specific relationship at issue, not some generalized view of importance of parent's interest in child. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In proceeding to terminate parental rights, fact that parent's interest in preserving parent-child relationship may be great is not as significant as fact that parent may be unwilling or unable to fulfill child's most basic needs. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Enactment in 1977 of new procedure for permanently terminating all parental rights, in order to facilitate adoption, does not imply authority of court to order permanent termination of fewer than all parental rights, such as right to visitation. D.C. Code §§ 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

New act, effective September 30, 1977, which provides for termination of all parental rights in neglect proceeding does not provide for permanent termination of parental visiting rights as such and does not amend statute prescribing time limits on dispositional orders, and thus in child neglect proceedings, dispositional orders concerning termination of parental visitation rights are subject to those time limitations. D.C. Code §§ 16-2322, 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Preadoption termination of parental rights to minor should not have been granted, and such termination should, instead, have been obtained through statutory procedure to accomplish termination of parental rights as part of adoption proceeding. D.C. Code §§ 16-304, 16-2305, 16-2320; D.C. Code SCR, Neglect Rule 18(c). White v. M., 358 A.2d 328, 1976 D.C. App. LEXIS 284 (1976).

#### **Time limits.**

Amended order in child neglect proceeding permanently terminating natural father's visitation rights violated statutory provision limiting dispositional orders initially to two years, subject to one-year extensions after notice of hearing. D.C. Code § 16-2322. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Since statute limits initial award of legal custody to two years, subject to extensions up to one year at a time, any order ancillary to such award of temporary custody, such as order limiting parent's visitation rights, is subject to same time limitations. D.C. Code § 16-2322(a)(2), (c). In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

#### **Validity.**

Neglect statute was not unconstitutional on ground of vagueness, where statute required an investigation into the circumstances of the particular case and provided clear guidelines for determining whether a child is neglected. D.C. Code §§ 16-2301, 16-2320. In re K., 429 A.2d 1331, 1981 D.C. App. LEXIS 259 (1981).

### **§ 16-2320.01. Restitution.**

(a)(1) Upon request of the Corporation Counsel, the victim, or on its own motion, the Division may enter a judgment of restitution in any case in which the court finds a child has committed a delinquent act and during or as a result of the commission of that delinquent act has:

(A) Stolen, damaged, destroyed, converted, unlawfully obtained, or substantially decreased the value of the property of another;

(B) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, funeral, or burial expenses, or lost wages; or

(C) Caused the victim of the delinquent act to incur reasonable counseling or other mental health expenses from a licensed health care provider if

the delinquent act involved personal injury, child or sexual abuse, robbery, or burglary.

(2) The Division may order the parent or guardian of a child, a child, or both to make restitution to:

(A) The victim;

(B) Any governmental entity;

(C) A third-party payor, including an insurer, that has made payment to the victim to compensate the victim for a property loss under paragraph (1)(A) of this subsection or pecuniary loss under paragraph (1)(B) or (C) of this subsection.

(3) Payment of restitution to a victim under this section has priority over payments of restitution to a third-party payor or to any governmental entity.

(4) If the victim has been compensated for the victim's loss by a third-party payor, the Division may order restitution payments to the third-party payor in the amount that the third-party payor compensated the victim.

(b) The Division may order the child to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the age, circumstances, and financial ability of the child to pay. The Division may order the parent or guardian to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the parent or guardian's financial ability to pay.

(c)(1) A judgment of restitution under this section may not exceed:

(A) As to property stolen, destroyed, converted, or unlawfully obtained, the lesser of the fair market value of the property or \$10,000;

(B) As to property damaged, or substantially decreased in value, the lesser of the amount of damage or the decrease in value of the property, not to exceed the fair market value of the property, or \$10,000;

(C) As to personal injuries inflicted, the lesser of the actual medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or \$10,000; or

(D) As to counseling or mental health expenses, the lesser of the actual expenses incurred by the injured person as a result of the incident or \$10,000.

(2) As an absolute limit in each case against any one child, his or her parents or guardians, or both, a judgment rendered under this section may not exceed \$10,000 for all acts arising out of a single incident.

(d) A restitution hearing to determine the liability of a parent or guardian, a child, or both, shall be held within 30 days after the disposition hearing and may be extended by the Division for good cause. A hearing under this section may be held as part of a factfinding or disposition hearing for the child. A judgment of restitution against a parent or guardian may not be entered unless the parent or guardian has been afforded a reasonable opportunity to be heard and to present appropriate evidence in the parent or guardian's behalf.

(e) In a restitution hearing, a written statement or bill for medical, dental, hospital, funeral, or burial expenses, or repair and replacement of property shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the



written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(f) Upon request of the Corporation Counsel or the recipient of a judgment of restitution, the Division may enforce the judgment for restitution under this section in the same manner that a monetary judgment is enforced by the Superior Court of the District of Columbia under Title 15 and applicable court rules.

(g) The Director of Social Services shall be responsible for monitoring the collection and disbursement of restitution payments when the judgment of restitution provides that restitution is to be made in periodic or installment payments. The Director of Social Services shall inform the Division of the progress or status of the restitution payments.

(h) A judgment of restitution under this section shall not preclude a civil action to recover damages from the child, parent, or guardian. A civil verdict shall be reduced by the amount paid under the judgment of restitution. A judgment of restitution may be filed under seal in any civil case.

(i) If at the restitution hearing the Division finds that a child is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the child to perform community service or some other non-monetary service of equivalent value in lieu thereof. If at the restitution hearing the Division finds that a parent or guardian is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the parent or guardian to perform community service or some other non-monetary service of equivalent value in lieu thereof.

(j) When entering a restitution order, the court shall include the restitution conditions both in the disposition order and in a separate judgement [sic] of restitution which shall be filed in a special proceedings case. An order requiring an adult to pay a judgment for restitution shall be filed in a special proceedings case.

(k) An order of restitution requiring a parent or guardian, a child, or both to pay restitution constitutes a judgment and lien against all property of the person or persons required to pay for the amount they are obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property.

(l) A judgment of restitution may be enforced by the Attorney General for the District of Columbia, a victim entitled under the order to receive restitution, a deceased victim's estate, or any other beneficiary of the judgment in the same manner as a civil judgment.

(m) A judgment for restitution that is filed in a special proceedings case shall contain the following information:

(1) The amount of the restitution; and

(2) The terms of the restitution, including the length of time in which restitution payments will be made and the amount of the installment payments.

(n) The court shall provide each victim in a juvenile case with a notarized and sealed copy of the Order of Restitution or Reparation.

(o) In addition to the information that is included in a judgment for restitution filed in a special proceedings case, the Division shall provide the

following information in a supplemental information form attached to the order. This information shall be kept confidential except by order of the Division:

(1) The full name, address, telephone number, and social security number of the restitution payer or person who is ordered to pay the restitution; and

(2) The full name, address, and telephone number of the recipient of the restitution.

(p) All restitution payments shall be paid to the Superior Court. The payer shall receive a receipt for the payment. If the restitution payment is mailed, a receipt will be returned only if the payer encloses a self-addressed stamped envelope.

(q) The court shall disburse the restitution payments to the recipient and make appropriate court records.

(Mar. 17, 2005, D.C. Law 15-261, § 602(g), 52 DCR 1188; Mar. 2, 2007, D.C. Law 16-191, § 40, 53 DCR 6794; June 3, 2011, D.C. Law 18-377, § 6(a), 58 DCR 1174.)

**Effect of amendments.** — D.C. Law 16-191, in subsec. (c)(1)(C), validated a previously made technical correction.

D.C. Law 18-377, in subsec. (g), added the second sentence; and added subsecs. (j) to (q).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 506(a) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of sec-

tion, see § 506(a) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

**Legislative history of Law 18-377.** — For history of Law 18-377, see notes under § 16-711.01.

## CASE NOTES

### ANALYSIS

Construction and application.  
Restitution in excess of fair market value.

### Construction and application.

Order requiring juvenile to pay \$2,434.72 in restitution to vehicle owner, imposed after juvenile entered "involved" plea to unauthorized use of a vehicle, would be vacated and case would be remanded for further proceedings, where record was devoid of factual findings on the issue of the damage caused by juvenile's delinquent act, and there was no indication in record that trial court actually considered statutory factors of juvenile's age, circumstances, and financial ability to pay, or the appropriateness of community service or some other non-monetary service of equivalent value, before

imposing the restitution order. In re N.G., 9 A.3d 478, 2010 D.C. App. LEXIS 726 (2010).

### Restitution in excess of fair market value.

Trial court's failure to determine whether amount of restitution granted exceeded property's value warranted remand in proceeding in which juvenile and his mother were ordered to pay restitution for damage he caused to car he had stolen and wrecked; restitution statute barred restitution in excess of fair market value of damaged property, judge ordered restitution as to stolen car in amount of \$7056.93, a figure based solely on repair estimates provided by car's owner, and reasonableness of repair estimate was not controlling in determination of whether amount of restitution sought or granted exceeded property's value. In re X.F., 995 A.2d 957, 2010 D.C. App. LEXIS 271 (2010).

## § 16-2321. Disposition of mentally ill or substantially retarded child.

(a) If no previous examination has been made under section 16-2315 and the



Division, after a factfinding but before a dispositional hearing, has reason to believe that a child is mentally ill or substantially retarded, it may order an examination as provided in section 16-2315.

(b) If as a result of the examination the child is found to be mentally ill or substantially retarded, the Division may, in lieu of other disposition, direct the appropriate authority to initiate commitment proceedings under Chapter 5 or 11 of Title 21. The Division may order the child detained in suitable facilities pending commitment proceedings.

(c) If the examination does not indicate that commitment proceedings should be initiated or if the proceedings do not result in commitment, the Division shall proceed to disposition pursuant to this subchapter.

(July 29, 1970, 84 Stat. 536, Pub. L. 91-358, title I, § 121(a).)

**Prior Codifications.** — 1981 Ed., § 16-2321. 1973 Ed., § 16-2321.

### CASE NOTES

#### ANALYSIS

Care and treatment, generally.  
Fundamental fairness.  
Review.

#### Care and treatment, generally.

Where juvenile court found that infant needed psychological or psychiatric care to meet his needs and there was claim that infant was receiving no treatment, there was "substantial complaint" calling for appropriate inquiry by juvenile court. D.C. Code §§ 16-2307, 16-2308. *In re Elmore*, 382 F.2d 125, 1967 U.S. App. LEXIS 6278 (C.A.D.C. 1967).

Congressional objective in passing Juvenile Court Act providing that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly possible equivalent to that which should have been given him by his parents, comprehends psychiatric care in appropriate cases. D.C. Code §§ 11-1551(a)(1)(F, G), 16-2316(3). *Creek v. Stone*, 379 F.2d 106, 1967 U.S. App. LEXIS 6580 (C.A.D.C. 1967).

If the Family Division of the Superior Court finds that child offender was mentally ill at the time of the offense and is mentally ill at the time of disposition and is therefore in the need of care and treatment, it would be a clear abuse of discretion to confine the child to an institution where appropriate care and treatment is not available; but if the Division finds that the

child was mentally ill at the time of the offense but at time of disposition is fully restored to mental health, Division would be required to determine whether in view of all the facts and circumstances the child is or is not in need of care and treatment. D.C. Code §§ 16-2315(a), (c)(1), 16-2317(c, d), 16-2320(a)(4), 16-2321(b, c). *In re M.*, 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

#### Fundamental fairness.

It is an indispensable element of fundamental fairness that a mentally ill child offender be accorded the same opportunities for psychiatric treatment and ultimate release as a similarly situated adult. *In re M.*, 407 A.2d 617, 1979 D.C. App. LEXIS 486 (1979).

#### Review.

Juvenile court did not err in concluding that defendant charged with first-degree felony-murder, armed robbery, assault with a dangerous weapon, assault upon police officer with dangerous weapon and carrying dangerous weapon was not subject to civil commitment as seriously ill juvenile, even though one psychologist testified that defendant was "border line psychotic" and second psychologist reported that defendant was "sociopath," where three psychiatrists concluded that defendant showed no signs of mental illness. *United States v. Howard*, 449 F.2d 1086, 1971 U.S. App. LEXIS 9212 (C.A.D.C. 1971).

## § 16-2322. Limitation of time on dispositional orders.

(a)(1) A dispositional order vesting legal custody of a neglected child in a department, agency, or institution shall remain in force for an indeterminate period not exceeding two years. Unless the order specifies that release is

permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.

(2) An order vesting legal custody of a child in an individual other than his parent shall remain in force for two years unless sooner terminated by order of the Division.

(3) An order of probation or a protective supervision order shall remain in force for a period not exceeding one year from the date entered, but the Director of Social Services or the agency providing supervision may terminate supervision at any time that it appears the purpose of the order has been achieved.

(4) Subject to subsection (f) of this section, a dispositional order vesting legal custody of a child adjudicated delinquent or in need of supervision in a department, agency, or institution shall remain in force for an indeterminate period not to exceed the youth's twenty-first birthday. Unless the order sets a minimum period for commitment of the child, or specifies that release is permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.

(b) A dispositional order vesting legal custody of a neglected child in an agency or institution may be extended for additional periods of one year upon motion of the department, agency, or institution to which the child was committed, if, after notice and hearing, the Division finds that the extension is necessary to safeguard the welfare of the child.

(c) Any other dispositional order may be extended for additional periods of one year, upon motion of the Director of Social Services or the Corporation Counsel, if, after notice and hearing, the Division finds that extension is necessary to protect the interest of the child.

(d) A release or termination of an order prior to expiration of the order pursuant to subsection (a)(1) or (3), shall promptly be reported in writing to the Division.

(e) Upon termination of a dispositional order a child shall be notified in writing of its termination. Upon termination of an order or release a child shall be notified, in accordance with rules of the Superior Court, of his right to move for the sealing of his records as provided in section 16-2335.

(f) Unless sooner terminated, all orders of the Division under this subchapter in force with respect to a child terminate when he reaches twenty-one years of age.

(July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); May 15, 1993, D.C. Law 9-272, § 103, 40 DCR 796; Mar. 24, 1998, D.C. Law 12-81, § 10(cc), 45 DCR 745; Mar. 17, 2005, D.C. Law 15-261, § 502(c), 52 DCR 1188.)

**Prior Codifications.** — 1981 Ed., § 16-2322.

1973 Ed., § 16-2322.

**Effect of amendments.** — D.C. Law 15-

261, in subsec. (c), substituted "Director of Social Services or the Corporation Counsel" for "Director of Social Services".

**Legislative history of Law 9-272.** — For



legislative history of D.C. Law 9-272, see Historical and Statutory Notes following § 16-2307.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see His-

torical and Statutory Notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Ancillary orders.  
Basis of findings.  
Due process.  
Extensions.  
Jurisdiction.  
Modification or termination orders.  
Permanent termination of visits.  
Purpose.  
Review.  
Termination of parental rights.

#### Ancillary orders.

Since statute limits initial award of legal custody to two years, subject to extensions up to one year at a time, any order ancillary to such award of temporary custody, such as order limiting parent's visitation rights, is subject to same time limitations. D.C. Code § 16-2322(a)(2), (c). In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

#### Basis of findings.

Trial court's decision to proceed immediately with disposition and commit juvenile to Youth Services Administration (YSA), following his delinquency adjudication for unauthorized use of vehicle (UUV) and receiving stolen property (RSP), was not reversible error; juvenile already had been committed to YSA in another case by a different judge, and was subject to being released to Maryland, and thus, juvenile's immediate commitment did not constitute "a penalty." In re T.H., 905 A.2d 195, 2006 D.C. App. LEXIS 441 (2006).

Where the judge ordered a one year extension of dispositional order but the record did not reflect which statutory criterion provided the basis for the judge's conclusion, the record would be remanded to the trial court so that it could either hold a new hearing or state the basis for its previous rulings. D.C. Code § 16-2322(b)(2). In re J., 413 A.2d 154, 1980 D.C. App. LEXIS 269 (1980).

#### Due process.

Due process permitted finding of child neglect to be based on preponderance of evidence, rather than clear and convincing evidence; statutory scheme involved temporary, third-party placement or supervised placement of child with parent for two-year period followed by annual reviews after notice and hearing and new determination that child was neglected.

D.C. Code 1981, §§ 16-2317(c)(2), 16-2322(a); U.S.C. Const. Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

#### Extensions.

Trial court does not have statutory authority to review decision of Director of Social Services not to seek extension of juvenile delinquent's probation, nor to, in effect, extend the juvenile's probationary period by continuing the proceeding in the trial court; instead, the trial court must issue a notice of termination upon expiration of the probationary period. In re M.O.R., 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

The statutory authority of the Director of Social Services to bring a motion to extend a juvenile delinquent's probation includes the authority to withdraw such a motion. In re M.O.R., 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

Office of Attorney General did not have authority to seek extension of juvenile delinquent's probation, after probation officer had effectively withdrawn motion for extension of probation, though Office of Attorney General had presented to trial court the initial motion to extend probation; only the Director of Social Services had statutory authority to seek extension of probation, and Office of Attorney General, by submitting the initial motion, had merely been acting on behalf of Director, without receiving a transfer of Director's authority. In re M.O.R., 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

Under statute providing that dispositional order vesting legal custody of a child adjudicated delinquent or in need of supervision in a department, agency, or institution shall remain in force for an indeterminate period not to exceed the youth's 21st birthday, trial court may order commitment that does not extend until child's 21st birthday. In re C.L.M., 766 A.2d 992, 2001 D.C. App. LEXIS 39 (2001).

When parent objects to continuance of neglected child's custody after commitment order has expired, court must, whether acting on motion by government or sua sponte, permit parent's objection to be fully aired at hearing and weighed as part of court's ruling on whether extending status quo is necessary to safeguard child's welfare. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court has authority to act sua sponte to extend commitment order for neglected child when Government fails to file motion to extend. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Error, if any, when family division of superior court continued commitment of neglected children, nunc pro tunc, was harmless where family division merely ratified de facto custody arrangement when Department of Human Services retained custody of neglected children after expiration of order committing children to Department's custody. D.C. Code 1981, §§ 16-2320, 16-2322. In re O.A., 548 A.2d 499, 1988 D.C. App. LEXIS 207 (1988).

Court ordering extension of juvenile commitment beyond statutory period must specify whether action is being taken for protection of juvenile or for protection of public interest. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Corporation counsel, representing the custodial institution and the "public interest," may move to extend the period of commitment of a juvenile when the extension is necessary for his or her rehabilitation, or the protection of the public interest. D.C. Code §§ 16-2303, 16-2305(f), 16-2322(b). In re J., 413 A.2d 154, 1980 D.C. App. LEXIS 269 (1980).

Once a motion to extend a dispositional order vesting legal custody of the child in an agency or institution is properly before the court, the court may, notwithstanding the custodial institution's recommendation, grant the extension if the court finds it necessary for the rehabilitation of the juvenile or the protection of the public interest. D.C. Code § 16-2322(b)(2). In re J., 413 A.2d 154, 1980 D.C. App. LEXIS 269 (1980).

Superior Court was without authority to revoke juvenile offender's aftercare status following his commitment to the legal custody of the social rehabilitation administration and to order his placement at residential center, after court found that juvenile offender had committed two curfew violations. D.C. Code §§ 16-2301 to 16-2338, 16-2301(21), 16-2320(a), (a)(5), (c), 16-2327; D.C. Code (1967 Ed. Supp. IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

### **Jurisdiction.**

Once juvenile was committed to custody of Department of Human Services (DHS), trial court was without jurisdiction to issue new disposition order absent fresh delinquency determination. In re C.L.M., 766 A.2d 992, 2001 D.C. App. LEXIS 39 (2001).

Trial court's jurisdiction over neglected child does not lapse with expiration of commitment order. D.C. Code 1981, § 16-2322. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's jurisdiction over neglected child did not end merely because trial court declared that its authority would end on certain date, especially where trial court noted that such words were not intended to be statement of law, but were merely expression of exasperation aimed at dislodging administrative inertia. D.C. Code 1981, § 16-2322. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's subject matter jurisdiction over neglected child did not lapse when Government failed to file motion to extend child's commitment and court acted sua sponte to extend commitment order. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's statement declaring that its authority over neglected child would end on certain date did not become law of the case which would prevent court from reconsidering its ruling at later date, where trial court disavowed its words at next hearing in light of established caselaw. D.C. Code 1981, § 16-2322. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court retained its subject matter jurisdiction over neglected child after date when commitment order was no longer in effect, where court did not dismiss neglect petition before government filed motion to extend commitment, but instead court subsequently extended commitment nunc pro tunc. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Natural parents' objection to continuing neglected child's commitment did not deprive trial court of jurisdiction to extend expired commitment order, whether upon motion by government or sua sponte. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Family division of superior court necessarily retained jurisdiction over custody of neglected children who had been committed to care and custody of Department of Human Services, even after expiration of commitment order, where children remained in ongoing physical custody of Department and parent had not challenged that arrangement. D.C. Code 1981, § 16-2322. In re O.A., 548 A.2d 499, 1988 D.C. App. LEXIS 207 (1988).

Although family division could have retained a veto power over release of juvenile delinquent if specifically reserved at time of original disposition, it did not do so, and thus it lacked jurisdiction to modify commitment order. D.C. Code 1973, § 16-2322(a)(1). In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

### **Modification or termination orders.**

Trial court lacked authority to terminate juvenile delinquent's commitment to custody of Department of Human Services prior to expira-



tion date. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

In deciding to terminate commitment for care of neglected child after child reached age of 18 years but before he attained age of 21 years, trial court was required to determine whether commitment was no longer necessary to safeguard child's welfare and whether termination was in child's best interest and could not base such decision solely on interests and safety of public. D.C. Code 1981, §§ 16-2301, 16-2310(a), 16-2320(a), 16-2322, 16-2323(d), (d)(2), 30-401. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

Court is authorized to grant motion to modify or terminate order of commitment if it finds such action necessary to safeguard welfare of juvenile or public interest. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

#### **Permanent termination of visits.**

When juvenile offender was committed to custody of social rehabilitation administration, superior court relinquished its authority to determine the appropriate measures needed to insure rehabilitation, and administration, under authority of mayor's office, was given exclusive supervisory responsibility over juvenile and had sole authority to determine appropriateness of aftercare program. D.C. Code § 16-2301(21); D.C. Code (1967 Ed. Supp. IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

Amended order in child neglect proceeding permanently terminating natural father's visitation rights violated statutory provision limiting dispositional orders initially to two years, subject to one-year extensions after notice of hearing. D.C. Code § 16-2322. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

New act, effective September 30, 1977, which provides for termination of all parental rights in neglect proceeding does not provide for permanent termination of parental visiting rights as such and does not amend statute prescribing

time limits on dispositional orders, and thus in child neglect proceedings, dispositional orders concerning termination of parental visitation rights are subject to those time limitations. D.C. Code §§ 16-2322, 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

#### **Purpose.**

Purpose of statute giving trial court the authority to decide whether a juvenile, who has been adjudicated delinquent, may be released from the custody of a public agency, such as the Department of Human Services (DHS), if the court retains this authority in the commitment order, is to give trial judges input into deciding when the child should be released into the community. In re P.S., 821 A.2d 905, 2003 D.C. App. LEXIS 222 (2003).

#### **Review.**

Error in permitting government to present victim impact statements at juvenile disposition hearing without providing them to juvenile beforehand in predisposition report had no effect on disposition that committed juvenile to youth center for indeterminate period not to exceed his twenty-first birthday; disposition was authorized by statute and was warranted by gravity of 16-year-old juvenile's admission, in pleading guilty, to facts establishing that he carjacked vehicle while armed and assaulted and threatened to kill two correctional officers. In re M.N.T., 776 A.2d 1201, 2001 D.C. App. LEXIS 143 (2001).

#### **Termination of parental rights.**

Disposition of neglected child does not terminate parental rights and is subject to continuous review hearings until child is 21 years of age; nevertheless, temporary placement of neglected child can substantially interfere with natural parent's right to develop relationship with child. D.C. Code 1981, §§ 16-2320, 16-2322, 16-2323. In re J.F., 615 A.2d 594, 1992 D.C. App. LEXIS 274 (1992).

## **§ 16-2323. Review of dispositional orders.**

(a) When a child has been adjudicated neglected and a dispositional order has been entered by the Division, the Division shall:

(1) Hold a review hearing at least every 6 months for every child for as long as the child remains in an out-of-home placement, unless the child has received a permanency hearing within the past 6 months;

(2) Hold a review hearing at least every year for all other children;

(3) If reasonable efforts are not made pursuant to § 4-1301.09a, hold a permanency hearing within 30 days after the determination that reasonable efforts need not be made; and

(4) Hold a permanency hearing for every child within 12 months after the

child's entry into foster care and at least every 6 months thereafter, for as long as the child remains in an out-of-home placement.

(b) The purpose of the review hearing shall include determining:

- (1) The safety of the child;
- (2) The continuing necessity for and appropriateness of the placement;
- (3) The extent of compliance with the case plan;
- (4) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; and
- (5) A date by which the child may be returned to and safely maintained in the home or placed for adoption or other permanent placement.

(c) The purpose of the permanency hearing shall include the determination required by subsection (b) of this section and determining the permanency plan for the child including whether, and if so when, the child will be:

- (1) Returned to the parent;
- (2) Placed for adoption, in which case the District shall file a motion for termination of parental rights, unless an adoption petition has been filed, in which case the District shall seek to be joined as a party to the filed petition;
- (3) Placed pursuant to an award of legal custody or guardianship; or
- (4) Placed, because of compelling circumstances, in another planned permanent living arrangement, such as with a kinship caregiver, in another relative placement, or in independent living.

(d) At least 10 days prior to each review or permanency hearing the Division or the department, agency, or institution responsible for the supervision of the services to the child and his parent, guardian, or custodian shall submit a report to the Division which shall include, but not be limited to, the following information:

(1) The services provided or offered to the child and his parent, guardian, or other custodian;

(2) Any evidence of the amelioration of the condition which resulted in the finding of neglect and any evidence of new problems which would adversely affect the child;

(3) An evaluation of the cooperation of the parent, guardian, or custodian with the Division or the applicable department, agency, or institution;

(4) In those cases in which the custody of the child has been vested in a department, agency, institution, or person other than the parent:

(A) The extent to which visitation has occurred and any reasons why visitation has not occurred or has been infrequent;

(B) The estimated time in which the child can be returned to the home; and

(C) Whether the agency has initiated or intends to initiate the filing by the Corporation Counsel of a motion requesting the termination of the parent and child relationship and any reasons why it does not intend to initiate the filing of such a motion; and

(5) Any other information as may be required by rules of the Superior Court of the District of Columbia.

(e) A notice of a review or permanency hearing under this section shall be given to all parties and their attorneys of record as prescribed by rules of the Superior Court of the District of Columbia.



(f) If the Division finds that the commitment of the child to a department, agency, institution or person other than the parent is no longer necessary to safeguard the welfare of the child, the Division may order:

(1) The child returned to the home and the provision of supervision or other services; or

(2) Any other disposition authorized by § 16-2320(a).

(g) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division pursuant to section 16-2320, the Director of Court Social Services or the Youth Services Administration, whichever is responsible for supervision of the disposition order, shall conduct periodic evaluations of the child to:

(1) Determine if rehabilitative progress has been made and if the services provided to the child have been effective; and

(2) Determine, in conjunction with the child, the child's attorney, and the Corporation Counsel, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the public.

(h)(1) Not more than once in a 6-month period, the child, or the child's parent or guardian, may petition the Division to modify a dispositional order, issued pursuant to section 16-2320, on the grounds that the child is not receiving appropriate services or level of placement.

(2) If the Division finds that the child is not receiving appropriate services or level of placement, the Division may specify a plan for services that will promote the rehabilitation and welfare of the child and the safety of the public, except that the Division may not specify the treatment provider or facility.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(b), 24 DCR 3341; June 27, 2000, D.C. Law 13-136, § 301(f), 47 DCR 2850; Mar. 17, 2005, D.C. Law 15-261, § 802, 52 DCR 1188.)

**Prior Codifications.** — 1981 Ed., § 16-2323.

1973 Ed., § 16-2323.

**Effect of amendments.** — D.C. Law 13-136 rewrote this section, which previously read:

"(a) When a child has been adjudicated neglected and a dispositional order has been entered by the Division, the Division shall hold a review hearing.

"(1) at least every six (6) months for a child under the age of six (6) years who is committed to the custody of an agency, department, or institution;

"(2) at least every six (6) months for a child of any age who is committed to

the custody of an agency, department, or institution but has not been committed for longer than two (2) years;

"(3) at least every year for all other children.

"(b) At least ten (10) days prior to each review hearing the Division or the department, agency, or institution responsible for the supervision of the services to the child and his parent, guardian, or custodian shall submit a report to the

Division which shall include, but not be limited to, the following information:

"(1) the services provided or offered to the child and his parent, guardian or other custodian;

"(2) any evidence of the amelioration of the condition which resulted in the finding of neglect and any evidence of new problems which would adversely affect the child;

"(3) an evaluation of the cooperation of the parent, guardian or custodian with the Division or the applicable department, agency, or institution;

"(4) in those cases in which the custody of the child has been vested in a department, agency, institution or person other than the parent—

"(A) the extent to which visitation has occurred and any reasons why visitation has not occurred or has been infrequent.

"(B) the estimated time in which the child can be returned to the home, and

"(C) whether the agency has initiated or intends to initiate the filing by the Corporation Counsel of a motion requesting the termination

of the parent and child relationship and any reasons why it does not intend to initiate the filing of such a motion; and

“(5) such other information as may be required by rules of the Superior Court of the District of Columbia.

“(c) A notice of a review hearing under this section shall be given to all parties and their attorneys of record as prescribed by rules of the Superior Court of the District of Columbia.

“(d) If the Division finds that the commitment of the child to a department, agency, institution or person other than the parent is no longer necessary to safeguard the welfare of the child, the Division may order:

“(1) the child returned to the home and the provision of supervision or other services; or

“(2) any other disposition authorized by section 16-2320(a).”

D.C. Law 15-261 added subsecs. (g) and (h).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(e) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law

13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 301(e) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(e) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(e) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 13-136.** — For Law 13-136, see notes following § 16-2301.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.

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### Admissibility of evidence.

Hearsay which consisted of second videotaped interview of child's older sister at child advocacy center and foster mother's testimony that child and her older sister told her that child's father touched them inappropriately and engaged in sexual acts with each of them was admissible in hearing to determine father's visitation rights to child, who had been adjudicated neglected; hearsay was admissible in many different hearings brought throughout the neglect process that addressed the issue of a non-custodial parent's right visitation, and adequate safeguards existed to ensure that father had the opportunity to rebut the hearsay. In re D.B., 947 A.2d 443, 2008 D.C. App. LEXIS 226 (2008).

### Best interests standard.

Best interest of the child standard permeates statutory framework of neglect statute, and

under plain language of provision providing for termination, best interest of the child must be considered when court acts to terminate commitment of child. D.C. Code 1981, §§ 16-2310(a), 16-2320(a)(5), 16-2323(d), (d)(2). In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

In deciding to terminate commitment for care of neglected child after child reached age of 18 years but before he attained age of 21 years, trial court was required to determine whether commitment was no longer necessary to safeguard child's welfare and whether termination was in child's best interest and could not base such decision solely on interests and safety of public. D.C. Code 1981, §§ 16-2301, 16-2310(a), 16-2320(a), 16-2322, 16-2323(d), (d)(2), 30-401. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

### Custody.

Findings that mother had failed adequately to protect her daughter from sexual abuse, and that the children were living in an unfit environment, did not authorize trial court, in divorce proceedings, to remove child custody from mother and award permanent custody to children's maternal grandmother; such findings implicated the child neglect statutes, and mother was afforded none of the protections of those statutes before custody was removed. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. T.S. v. M.C.S., 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).



Trial court did not have authority to remove child custody from mother and award permanent custody to children's maternal grandmother, in consolidated divorce and neglect proceedings, where the neglect proceedings were initiated by mother against father, and mother never received the benefit of any of the safeguards that follow the institution of child neglect proceedings. D.C. Code 1981, §§ 11-1101, 16-911, 16-914, 16-2306(a), 16-2317(b), 16-2319, 16-2320, 16-2322, 16-2323. *T.S. v. M.C.S.*, 747 A.2d 159, 2000 D.C. App. LEXIS 61 (2000).

Court must focus on child's welfare in evaluating proper temporary custody of neglected child. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

#### **Discretion of court.**

Statutory provisions, requiring trial court to hold permanency hearings every six months to provide for detailed oversight of adequacy of planning by agency, requiring agency to submit report to trial court detailing services child was receiving, and requiring court to determine child's permanency plan, did not authorize trial court to issue order requiring Child and Family Services Agency (CFSA) to pay directly to neglected child on his twenty-first birthday, after independent living program in which child had been placed by CFSA closed three weeks prior to his emancipation, apparently relegating child to homeless shelter, \$1,800 in "emancipation funds" which had allegedly been promised child by program, inasmuch as trial court's authority to oversee CFSA's plans for neglected children did not provide it with authority to order CFSA to do something that was beyond reach of the statute. *In re D.K.*, 26 A.3d 731, 2011 D.C. App. LEXIS 504 (2011).

Trial court abused its discretion in sua sponte deciding to close neglect case after subject child, who had been committed to the care of the Child and Family Services agency (CFSA), reached her eighteenth birthday without making a finding as to child's best interest. *In re A.R.*, 950 A.2d 667, 2008 D.C. App. LEXIS 268 (2008).

#### **Due process.**

Natural father was not denied due process by trial court's refusal to grant custody of neglected child or even visitation rights to father, where father had never been child's custodial parent and his home environment was totally unfamiliar to child, child had met father only once in supervised visitation without being told that he was child's father, father's fitness had not been evaluated, and child had traumatic response to father's first visit. *U.S.C. Const.Amends. 5, 14. Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Natural father's claimed denial of due process in commitment proceedings for neglected child was premature, where trial court had not yet made factual finding as to whether father had received actual notice of proceeding by virtue of his ongoing relationship with mother. *U.S.C. Const.Amends. 5, 14. Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Rights of natural parent regarding child are subject to due process protection, but those rights are not absolute and must give way before child's best interests. *U.S. Const.Amend. 5. In re A.M.*, 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

#### **Findings, generally.**

Racial considerations, whether overt or covert, form impermissible basis for decision as to disposition of juvenile. *In re L.J.*, 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

Court ordering extension of juvenile commitment beyond statutory period must specify whether action is being taken for protection of juvenile or for protection of public interest. *In re L.J.*, 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

#### **Hearing.**

When parent objects to continuance of neglected child's custody after commitment order has expired, court must, whether acting on motion by government or sua sponte, permit parent's objection to be fully aired at hearing and weighed as part of court's ruling on whether extending status quo is necessary to safeguard child's welfare. D.C. Code 1981, § 16-2322(b). *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

In neglect proceedings, mother's status was no longer relevant as to reasonable efforts to prevent removal or return child home and "contrary to welfare" findings, once first permanency hearing was held and permanency goal changed from reunification to adoption. *In the Matter of A.S.*, 131 WLR 2249 (Super. Ct. 2003).

#### **Jurisdiction.**

Trial court's jurisdiction over neglected child does not lapse with expiration of commitment order. D.C. Code 1981, § 16-2322. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's jurisdiction over neglected child did not end merely because trial court declared that its authority would end on certain date, especially where trial court noted that such words were not intended to be statement of law, but were merely expression of exasperation aimed at dislodging administrative inertia. D.C. Code 1981, § 16-2322. *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court's subject matter jurisdiction over neglected child did not lapse when Government failed to file motion to extend child's commit-

ment and court acted *sua sponte* to extend commitment order. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Trial court retained its subject matter jurisdiction over neglected child after date when commitment order was no longer in effect, where court did not dismiss neglect petition before government filed motion to extend commitment, but instead court subsequently extended commitment *nunc pro tunc*. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Natural parents' objection to continuing neglected child's commitment did not deprive trial court of jurisdiction to extend expired commitment order, whether upon motion by government or *sua sponte*. D.C. Code 1981, § 16-2322(b). Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

### **Mandamus.**

If commitment order for neglected child has expired and court has not acted on motion by government or its own motion to hold required hearing and to extend, modify, or terminate order, natural parents may file motion in trial court, or if necessary may petition for writ of mandamus in Court of Appeals, to compel Department of Human Services and court to act in accordance with statute. Neglect Rule 21. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

### **Protective supervision.**

Statute defining "protective supervision" granted trial court authority to revoke protective supervision order regarding care of child at any time while order was in effect, and fact that provision was of definitional nature was not determinative. D.C. Code 1981, § 16-2301(19). In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

Even if trial court did not have express statutory authority to revoke protective supervision order regarding care of mother's child, best interests of child would support court's revocation given detailed statement of reasons by trial judge, procedural safeguards afforded to mother by fact-finding hearing, and past record of neglect of child. In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

That Congress chose to confer on court power to revoke protective supervision orders through its definition of protective supervision, rather than by enacting separate section, had no effect on statutory scheme as a whole. In re A.M., 589 A.2d 1252, 1991 D.C. App. LEXIS 89 (1991).

### **Review.**

In a child neglect case in which fundamental rights of children and their parent are at issue, the Court of Appeals is reluctant, unless compelled to do so by statute or binding precedent,

to dispose of an appeal on technical grounds not related to the merits. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court, and the exercise of that discretion is reviewable only for abuse. In re T.L., 859 A.2d 1087, 2004 D.C. App. LEXIS 525 (2004).

Mother had no standing to appeal finding in neglect adjudication that she was unable to take care of the children while imprisoned for child abuse; even if her appeal were successful, mother could not have obtained any practical relief, for neglect adjudication based on her abuse of her son, and ensuing consequences of that adjudication, would be undisturbed. In re Z.C., 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

Mother, who did not appeal from child neglect adjudication, lacked standing to ask the Court of Appeals to strike from trial judge's order, as unsupported by the evidence, one of the three findings supporting adjudication, namely, finding that she was incarcerated and therefore unable to care for her children. In re Z.C., 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

When the trial court in a juvenile delinquency case enters a ruling at a disposition hearing that is within the limitations established by statutes, it is not the function of the Court of Appeals to review that exercise of discretion. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Even if trial court erred in entering order to extend neglected child's commitment *nunc pro tunc*, errors were harmless, where such orders simply formalized court's ongoing approval of Department of Human Services' continued legal custody of child. Appeal of A.H., 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

### **Termination of parental rights.**

Trial court's denial of mother's motion for reconsideration of order terminating her parental rights cured defect in her appeal occasioned by her having filed notice of appeal prior to ruling on motion for reconsideration. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

In a child protection proceeding, when there still may be value in retaining at least the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, termination of parental rights may be unwarranted if there is no reasonable likelihood of adoption because of the absence of any substantial good to be achieved for the child. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).



Trial court did not abuse its discretion, in child protection proceedings, in concluding that termination of mother's parental rights was warranted, despite children's apparent attachment to mother and despite mother's contention that older children's ages and special needs made them unadoptable, where mother was unfit parent and children were found to be attractive, friendly, affectionate, and in good relationships with their respective foster parents. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Disposition of neglected child does not terminate parental rights and is subject to continuous review hearings until child is 21 years of age; nevertheless, temporary placement of neglected child can substantially interfere with natural parent's right to develop relationship with child. D.C. Code 1981, §§ 16-2320, 16-2322, 16-2323. In re J.F., 615 A.2d 594, 1992 D.C. App. LEXIS 274 (1992).

#### **Time limitations.**

Amended order in child neglect proceeding permanently terminating natural father's visi-

tation rights violated statutory provision limiting dispositional orders initially to two years, subject to one-year extensions after notice of hearing. D.C. Code § 16-2322. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

New act, effective September 30, 1977, which provides for termination of all parental rights in neglect proceeding does not provide for permanent termination of parental visiting rights as such and does not amend statute prescribing time limits on dispositional orders, and thus in child neglect proceedings, dispositional orders concerning termination of parental visitation rights are subject to those time limitations. D.C. Code §§ 16-2322, 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

Since statute limits initial award of legal custody to two years, subject to extensions up to one year at a time, any order ancillary to such award of temporary custody, such as order limiting parent's visitation rights, is subject to same time limitations. D.C. Code § 16-2322(a)(2), (c). In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

## **§ 16-2324. Vacation, termination of orders.**

(a) An order of the Division under this subchapter shall be set aside if —

- (1) it was obtained by fraud or mistake sufficient to set aside an order or judgment in a civil action;
- (2) the Division lacked jurisdiction; or
- (3) newly discovered evidence so requires.

(b) Not less than 6 months after issuing an order pursuant to section 16-2323(h)(2), the Division may terminate an order under this subchapter on the grounds that the Youth Services Administration is not providing or cannot provide appropriate services or level of placement.

(July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; May 15, 1993, D.C. Law 9-272, § 104, 40 DCR 796; Mar. 17, 2005, D.C. Law 15-261, § 803, 52 DCR 1188.)

**Prior Codifications.** — 1981 Ed., § 16-2324.

1973 Ed., § 16-2324.

**Effect of amendments.** — D.C. Law 15-261, in the section heading, substituted "Vacation" for "Modification"; designated the existing language of the section as subsec. (a); and added subsec. (b).

**Legislative history of Law 2-22.** — For

legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 9-272.** — For legislative history of D.C. Law 9-272, see Historical and Statutory Notes following § 16-2307.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

## CASE NOTES

## ANALYSIS

Construction and application.  
Evidence.  
Failure to execute order.  
Fraud or mistake.  
Newly discovered evidence.  
Powers of court.  
Setting aside orders.

**Construction and application.**

The language of this section is mandatory, thus, if the conditions of paragraph (1), (2) or (3) are shown to exist, the disposition order "shall be set aside." In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

**Evidence.**

Judge who retained veto power over release was authorized, after considering recommendations of Department of Human Services and expert who examined juvenile, to reject testimony if he found it unpersuasive. In re L.J., 546 A.2d 429, 1988 D.C. App. LEXIS 140 (1988).

**Failure to execute order.**

Family Division of the Superior Court had jurisdiction to order a particular placement for a delinquent juvenile after the conditions of its original commitment order were not executed by the Department of Human Services. D.C. Code 1981, §§ 16-2320(a)(5), (c)(1), 16-2324(a)(3). In re A.A.I., 483 A.2d 1205, 1984 D.C. App. LEXIS 549 (1984).

**Fraud or mistake.**

If the placement originally ordered delivered exactly what the court contemplated when it entered the order, then it would not be enough under paragraph (1) that the court or counsel was mistaken in thinking that there was no better placement option available. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

**Newly discovered evidence.**

"Newly discovered evidence" that would warrant a modification of an original disposition order must have been in existence at the time of trial. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

Alleged failure by Department of Human Services to provide care and rehabilitation to juvenile delinquents placed in its custody was not "newly discovered evidence" that would warrant setting aside disposition order; such "evidence" did not come into existence until after original order of commitment had occurred. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

If respondent shows that evidence was discovered after disposition which would have produced a different disposition if discovered

before, the Family Division is not precluded—as the Civil Division would be—from granting relief under paragraph (3) because the child's counsel failed to exercise due diligence in discovering that evidence. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Motions under paragraph (3) are not required to meet the same civil sufficiency standards of paragraph (1). In paragraph (3), Congress meant to invoke a much broader discretion of the Family Division to consider, based on newly discovered evidence, what the interests of justice required in the particular case, bearing in mind that the dominant goal of juvenile proceedings is the care and rehabilitation of the respondent. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

Where a Family Division judge learns, through newly discovered evidence, that a residential facility at which it ordered a juvenile placed, is grossly incompetent, abusive, and literally life-threatening to that respondent such that his continued placement there will not only lead to no rehabilitation but will likely delay his rehabilitation and may seriously and permanently injure him, the court has authority under paragraph (3) to set aside the disposition order. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

**Powers of court.**

Broad post-dispositional supervisory role of Family Division would be inconsistent with the current state of the law in this jurisdiction, thus, each motion seeking relief under this section must be carefully examined on its own merits to see if the circumstances there presented can be properly comprehended by the explicit statutory grant of authority. In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).

**Setting aside orders.**

This section requires that the court return matters to the status quo ante by wiping out the disposition order altogether. What follows that action depends on the nature of the grounds which caused the order to be set aside. If, for example, the court acted under paragraph (2), because it lacked jurisdiction, no further proceedings would ensue. If the grounds for the set aside were paragraph (1) or (3), it may be necessary for the court to grant a new fact-finding hearing (if the motion challenged the manner in which the juvenile was found guilty of an offense) or to enter a new disposition order (if the motion related only to the arrangements decreed by the court in its initial disposition order). In re D.W.G., 115 WLR 2097 (Super. Ct. 1987).



## § 16-2325. Support of committed child.

Whenever legal custody of a child is vested in any agency or individual other than the child's parent, after due notice to the parent or other persons legally obligated to care for and support the child and after hearing, the Division may, at the dispositional hearing or thereafter, order and decree that the parent or other legally obligated person shall pay, in such manner as the Division may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the Division may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2325.

1973 Ed., § 16-2325.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Modification of orders.

Notice.

Review.

Scope of judicial authority.

#### Modification of orders.

Motion to have the Department of Human Services pay for placement for delinquent juvenile, who was on aftercare status, in a private school, could not be treated as a motion for modification of commitment order such as would have given family division jurisdiction to order the placement where the juvenile or his parents did not first request the agency to terminate its custody over the juvenile. D.C. Code 1978 Supp. § 16-2324(b, c). In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

#### Notice.

Notification of father's attorney by social worker, less than five business days before dispositional hearing, of availability of predisposition report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was insufficient to meet due notice requirement of child support statute; while five-day prefiling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter

which required different factual and legal focus. D.C. Code 1981, §§ 16-916.1, 16-2319(b), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of predispositional report, less than five business days before dispositional hearing, was inadequate to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Defect in initial notice that issue of child support would be addressed in dispositional hearing was not cured by trial court's denial of motion to vacate child support award without prejudice to father filing motion for reconsideration setting forth specific factual reasons why support order should be reduced or vacated; not only was notice inadequate but court never afforded father opportunity for hearing on child support mandated by statute at any time after it could be assumed reasonably that he had received due notice of addition of child support issue to the proceedings. D.C. Code 1981, § 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

#### Review.

Although juvenile, who had been adjudicated delinquent, was over 18 years old at time of appeal and was no longer committed to custody of the Department of Human Services, appeal

## § 16-2325.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

of superior court order requiring specific placement for the juvenile in a private school and requiring the Department to pay expenses of that placement had not been rendered moot since, were the Court of Appeals to assume that a juvenile case could be mooted when the child attains age of majority and leaves custody of the agency, issue presented would be capable of repetition, yet evading review. In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

### Scope of judicial authority.

Family division of superior court lacked authority to order specific placement in private school for delinquent juvenile who was on aftercare status under custody of the Department of Human Services and to order the agency to pay expenses of that placement since, once custody had been transferred, the agency assumed exclusive supervisory responsibility over the juvenile. In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

Education for all Handicapped Children Act

of 1975 did not provide authority for family division's order of specific placement in a private school for delinquent juvenile who was on aftercare status under custody of the Department of Human Services and to order the agency to pay expenses of that placement. Education of the Handicapped Act, §§ 602, 606, 607, 611-620, 653 as amended 20 U.S.C. §§ 1401, 1405, 1406, 1411-1420, 1453. In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

Statute permitting family division of superior court to order any public agency of the District of Columbia to provide any service the division determines is needed could not serve as a justification for orders which were attempted modifications of original disposition and made approximately one year later since the statutory authority existed only with respect to the initial disposition or commitment order. D.C. Code 1978 Supp. § 16-2320(a)(5)(i). In re G., 443 A.2d 13, 1982 D.C. App. LEXIS 302 (1982).

## § 16-2325.01. Participation order.

(a) In any proceedings under this chapter, the court shall enter an order specifically requiring a parent or guardian to participate in the rehabilitation process of a juvenile, including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program, unless the court determines that such an order is not in the best interests of the child.

(b) The court shall, when the court determines that it is in the best interests of the child, issue an order applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian. The order shall require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding or court ordered program concerning the child.

(c) A person failing to comply with an order issued under this section without good cause may be found in civil contempt of court.

(d) The court shall issue a bench warrant for any parent or guardian or person with whom the child resides, if other than the parent or guardian, who, without good cause, fails to appear at any juvenile proceeding or court ordered program.

(e) For the purposes of this section, good cause for failing to appear shall include, but not be limited to, a situation where a parent, guardian, or person with whom the child resides:

(1) Has an employment obligation that would result in the loss of employment if not complied with;

(2) Does not have physical custody of the child and resides outside the District of Columbia; or

(3) Resides in the District of Columbia, but is outside the District of Columbia at the time of the juvenile proceeding or court ordered program for reasons other than avoiding participation or appearance before the court, and



participating or appearing in court will result in undue hardship to such parent or guardian.

(f) It is the intent of this section that every parent or guardian whose child is the subject of a juvenile proceeding and any court ordered program under this chapter should attend any such proceeding or program as often as is practicable.

(g) Nothing in this section shall be construed to create a right for any juvenile to have his or her parent or guardian present at any juvenile proceeding or court ordered program at which such juvenile is present.

(Apr. 9, 1997, D.C. Law 11-199, § 2(c), 43 DCR 4385; Mar. 17, 2005, D.C. Law 15-261, § 1002(b), 52 DCR 1188; Mar. 2, 2007, D.C. Law 16-191, § 41, 53 DCR 6794.)

**Prior Codifications.** — 1981 Ed., § 16-2325.1.

**Effect of amendments.** — D.C. Law 15-261, in subssecs. (a) and (b), substituted “shall” for “may”; and, in subsec. (c), inserted “, unless the court determines that such an order is not in the best interest of the child”.

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(a) of the Juvenile Justice Temporary Act of 2004 (D.C. Law 15-223, March 16, 2005, law notification 52 DCR 3549).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2(d) of the Juvenile Justice Emergency Act of 2004 (D.C. Act 15-497, July 19, 2004, 51 DCR 7844).

**Legislative history of Law 11-199.** — Law 11-199, the “Adjustment Process for Nonviolent

Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996,” was introduced in Council and assigned Bill No. 11-622, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-361 and transmitted to both Houses of Congress for its review. D.C. Law 11-199 became effective on April 9, 1997.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

**Editor’s notes.** — Section 28(c)(4) of D.C. Law 15-354 provided that the section designation of § 16-2325.1 of the District of Columbia Official Code is redesignated as § 16-2325.01.

## § 16-2325.02. Report on failure of respondents to appear in delinquency cases.

The Chief Judge of the Superior Court of the District of Columbia shall submit to the Council a semiannual report detailing the number of respondents in delinquency cases who fail to appear before any court or judicial official as required and the percentage that represents of those adjudicated. For each failure to appear, the report shall include the age of the respondent, the underlying offense with which the respondent was charged, and whether the respondent had previously failed to appear.

(Apr. 24, 2007, D.C. Law 16-306, § 206(d), 53 DCR 8610.)

**Emergency legislation.** — For temporary (90 day) addition, see § 206(d) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) addition, see § 206(d) of Omnibus Public Safety Congressional Re-

view Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) addition, see § 206(d) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) addition, see § 206(d)

of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

**Legislative history of Law 16-306.** — For Law 16-306, see notes following § 16-1001.

## § 16-2326. Court costs and expenses.

(a) If, at the dispositional hearing or thereafter, the Division finds, after due notice and a hearing, that the parent or other person legally obligated to care for and support a child subject to proceedings under this subchapter is financially able to pay, the Division may order him or her to pay all of or part of the costs of —

(1) physical and mental examinations and treatment of the child ordered by the Division;

(2) except in neglect cases, a reasonable compensation for the services and related expenses of counsel appointed by the Division to represent the child; and

(3) in neglect cases, a reasonable compensation for the services and related expenses of counsel appointed by the Division to represent the parent or person.

(b) Payment under this section shall be made as prescribed by rules of the Superior Court of the District of Columbia.

(July 29, 1970, 84 Stat. 537, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 409, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2326.  
1973 Ed., § 16-2326.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### § 16-2326.01. Compensation of attorneys in neglect and termination of parental rights proceedings.

(a)(1) Except as provided for by subsections (b) and (e), an attorney representing a person who is financially unable to obtain legal counsel in a neglect proceeding or appointed to serve as counsel or guardian ad litem for a child who is the subject of a neglect proceeding shall, at the end of the representation or at the end of a segment of the representation, be compensated at a rate not less than the hourly rates established in D.C. Official Code, sec. 11-2604.

(2) The attorney may make a claim for expenses reasonably incurred during the course of the representation.

(b) Compensation payable pursuant to this section shall be subject to the following limitations:

(1) for all proceedings from initial hearing through disposition, the maximum compensation shall be \$1,980;

(2) for all subsequent proceedings other than termination of parental rights, the maximum compensation shall be \$1,980 per year;

(3) for proceedings to terminate parental rights, the maximum compensation shall be \$2,700; and



(4) for appeal of trial court orders, the maximum compensation shall be \$1,350 per case.

(c)(1) A separate claim for compensation and reimbursement shall be made to the Superior Court of the District of Columbia for representation before that Court, and to the District of Columbia Court of Appeals for representation before the District of Columbia Court of Appeals.

(2) Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source.

(3) The Superior Court of the District of Columbia or the District of Columbia Court of Appeals shall fix the compensation and reimbursement to be paid to the attorney.

(4) In cases where representation is furnished other than before the Superior Court of the District of Columbia or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court of the District of Columbia which shall fix compensation and reimbursement to be paid.

(d) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(e) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, the person may do so without prepayment of fees, costs, or security and without filing the affidavit required by D.C. Official Code § 11-2604.

(f)(1) Claims for compensation and reimbursement in excess of the maximum amount provided in subsection (b) may be approved for extended or complex representation when the payment is necessary to provide fair compensation. The request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court of the District of Columbia upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the District of Columbia Court of Appeals upon recommendation of the presiding judge in the case.

(2) A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(g)(1) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request compensation for services in an ex parte application.

(2) Upon a finding, after appropriate inquiry in an ex parte proceeding, that investigative, expert, or other services are necessary but are not available through existing court resources, and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(3) Compensation to be paid to a person for services rendered under this subsection shall not exceed \$300, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.

(4) In no event shall the total compensation recoverable for the services described in this section exceed \$750 or the rate provided by D.C. Official Code § 11-2605(c).

(h) Compensation for attorneys appointed to represent parties in neglect proceedings and costs of investigative, expert, and other services shall be paid pursuant to procedures established by the Superior Court of the District of Columbia.

(Mar. 13, 1985, D.C. Law 5-129, § 2(c), 31 DCR 5192; Feb. 24, 1987, D.C. Law 6-192, § 2, 33 DCR 7836; Aug. 6, 1993, D.C. Law 10-11, § 202, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 202, 40 DCR 5489; Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 20(a); Nov. 25, 2008, D.C. Law 17-271, § 2, 55 DCR 11033; Mar. 11, 2009, 123 Stat. 700, Pub. L. 111-8, § 822(b).)

**Cross references.** — Services to indigents, payment, see § 11-2604.

**Prior Codifications.** — 1981 Ed., § 16-2326.1.

**Effect of amendments.** — Pub. L. 107-96, in subsec. (b) substituted “\$1,600” for “\$1,100” in pars. (1) and (2), substituted “\$2,200” for “\$1,500” in par. (3), and substituted “\$1,100” for “\$750” in par. (4).

D.C. Law 17-271, in subsecs. (b)(1), (2), substituted “\$1,760” for “\$1,600”; in subsec. (b)(3), substituted “\$2,400” for “\$2,200”; and, in subsec. (b)(4), substituted “\$1,200” for “\$1,100”.

Pub. L. 111-8, in subsecs. (b)(1), (2), substituted “\$1,980” for “\$1,760”; in subsec. (b)(3), substituted “\$2,700” for “\$2,400”; and, in subsec. (b)(4), substituted “\$1,350” for “\$1,200”.

**Emergency legislation.** — For temporary (90 day) amendment, see § 2 of Appointed Attorney Compensation Emergency Act of 2008 (D.C. Act 17-455, July 28, 2008, 55 DCR 8717).

For temporary (90 day) amendment of section, see § 2 of Appointed Attorney Compensation Congressional Review Emergency Act of 2008 (D.C. Act 17-539, October 20, 2008, 55 DCR 11419).

**Legislative history of Law 5-129.** — Law 5-129, the “Neglect Representation Equity Act of 1984,” was introduced in Council and assigned Bill No. 5-356, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 10, 1984, and September 12, 1984, respectively. Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-182 and transmitted to both Houses of Congress for review.

**Legislative history of Law 6-192.** — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned

Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-11.** — D.C. Law 10-11, the “Omnibus Budget Support Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

**Legislative history of Law 10-25.** — D.C. Law 10-25, the “Omnibus Budget Support Act of 1993,” was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

**Legislative history of Law 17-271.** — Law 17-271, the “Appointed Attorney Compensation Act of 2008,” was introduced in Council and assigned Bill No. 17-757 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on September 30, 2008, it was assigned Act No. 17-525 and transmitted to both Houses of Congress for its review. D.C. Law 17-271 became effective on November 25, 2008.

**Effective date.** — Pub. L. 107-96, 115 Stat. 929, the District of Columbia Appropriations Act, 2002, provided in part:

“The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after March 1, 2002.”

Section 822(c) of Pub. L. 111-8 provided: “The amendments made by this section shall apply with respect to cases and proceedings initiated on or after the date of enactment of this Act.”



**Editor's notes.** — Section 28(c)(5) of D.C. Law 15-354 provided that the section designation of § 16-2326.1 of the District of Columbia Official Code is redesignated as § 16-2326.01.

Section 3 of D.C. Law 17-271 provided: "Sec. 3. Applicability of maximum compensation increases. Section 2 shall apply to compensation for representation provided in cases and proceedings initiated on or after the effective date

of An Act To amend title 11, District of Columbia Official Code, to implement the increase provided under the District of Columbia Appropriations Act, 2008, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts, and for other purposes, H.R. 5551, 110th Cong. (2008)."

## § 16-2327. Probation revocation; disposition.

(a) If a child on probation incident to an adjudication of delinquency or need of supervision violates any term of his probation he may be proceeded against in a probation revocation hearing.

(b) A proceeding to revoke probation shall be commenced by the filing of a revocation petition by the Corporation Counsel. The petition to revoke probation shall be in such form as may be prescribed by rule of the Superior Court and shall be served together with a summons in the manner provided in section 16-2306.

(c) Probation revocation proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence. As nearly as may be appropriate, probation revocation proceedings shall conform to the procedures established by this subchapter for delinquency and need of supervision cases.

(d) If a child is found to have violated the terms of his probation, the Division may modify the terms and conditions of the probation order, extend the period of probation, or enter any other order of disposition specified in section 16-2320 for a delinquent child.

(July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2327.

1973 Ed., § 16-2327.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Judicial authority.

Jurisdiction.

Standard of proof.

#### Judicial authority.

Juvenile delinquent's filing of notice of appeal, relating to trial court's determination to maintain the status quo until Court of Appeals ruled on mandamus petition to require trial court to rule on whether his probation should be extended, did not divest the trial court of jurisdiction to rule on the motion to extend probation. In re M.O.R., 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

Superior Court was without authority to revoke juvenile offender's aftercare status follow-

ing his commitment to the legal custody of the social rehabilitation administration and to order his placement at residential center, after court found that juvenile offender had committed two curfew violations. D.C. Code §§ 16-2301 to 16-2338, 16-2301(21), 16-2320(a), (a)(5), (c), 16-2327; D.C. Code (1967 Ed. Supp. IV) § 16-2322(a). In re J.M.W., 411 A.2d 345, 1980 D.C. App. LEXIS 218 (1980).

#### Jurisdiction.

Trial court, having found delinquent juvenile to be in violation of his probation, did not act within its statutory authority when it terminated probation as having been unsuccessfully completed, rather than revoking probation or choosing an alternative disposition from among

those enumerated by statute governing probation in delinquency matters; trial court made no finding that juvenile no longer needed care or rehabilitation, and, if anything, finding that juvenile had violated his probation showed the contrary, and, in exercising dispositional authority in delinquency cases, court was required to act pursuant to specifically granted authority. In re D.L., 904 A.2d 367, 2006 D.C. App. LEXIS 437 (2006).

Government preserved for appeal its claim that trial court, in issuing order terminating delinquent juvenile's probation, was exceeding

its statutory authority, even though government's objection did not cite to a particular statutory provision that trial court's order would violate, as objection included suggestion as to what a correct disposition might be. In re D.L., 904 A.2d 367, 2006 D.C. App. LEXIS 437 (2006).

#### Standard of proof.

The appropriate standard of proof in a probation revocation hearing is the preponderance of the evidence standard. *United States v. Johnson*, 123 WLR 2373 (Super. Ct. 1995).

## § 16-2328. Interlocutory appeals.

(a) A child who has been ordered transferred for criminal prosecution under section 16-2307 or detained or placed in shelter care or subjected to conditions of release under section 16-2312, may, within two days of the date of entry of the Division's order, file a notice of interlocutory appeal.

(b) The District of Columbia Court of Appeals shall (1) hear argument on an appeal under subsection (a) on or before the third day (excluding Sundays) after the filing of notice under that subsection, (2) dispense with any requirement of written briefs other than the supporting materials previously submitted to the Division, and (3) render its decision on or before the next day following argument on appeal. The court may in rendering its decision dispense with the issuance of a written opinion.

(c) In cases involving transfer for criminal prosecution, the pendency of an interlocutory appeal shall act to stay criminal proceedings. Until the time for filing an interlocutory appeal has lapsed, or if an appeal is filed until its completion, no child who has been ordered transferred for criminal prosecution shall be removed to a place of adult detention, except as provided in section 16-2313, or otherwise treated as an adult.

(d) The decision of the District of Columbia Court of Appeals shall be final.

(July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2328.

1973 Ed., § 16-2328.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Burden of proof.

Due process.

Jurisdiction, generally.

Orders subject to review, generally.

Record on appeal.

Review.

Time limits.

#### Burden of proof.

Juvenile seeking summary reversal of order

detaining him pending trial on charges of carnal knowledge and assault had burden of demonstrating that merits of claim so clearly warranted relief as to justify expedited action. D.C. Code §§ 16-2312(d), 16-2327, 22-504, 22-2801. In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

#### Due process.

Mother's due process rights were not violated by statute limiting interlocutory appeals from order placing child in shelter care to appeals by



the child. D.C. Code 1981, § 16-2328(a); U.S. Const. Amend. 5. In re S.J., 632 A.2d 112, 1993 D.C. App. LEXIS 252 (1993).

#### **Jurisdiction, generally.**

In general, filing of timely notice of appeal immediately transfers jurisdiction of all matters relating to appeal from trial court to appellate court. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

#### **Orders subject to review, generally.**

Expedited procedure for appeal of denial of juvenile detainee's challenge to pretrial detention order did not apply to motion to reconsider order of detention; expedited procedure only applied to original order of detention, given that contrary reading would allow detainee to impress court into quasi-emergency service any time detainee requested and was denied reconsideration of original order. D.C. Code 1981, §§ 16-2312, 16-2328; Juvenile Rule 107(d). In re K.H., 647 A.2d 61, 1994 D.C. App. LEXIS 148 (1994).

Court lacked jurisdiction to hear mother's interlocutory appeal from order placing child in shelter care. D.C. Code 1981, § 16-2328(a). In re S.J., 632 A.2d 112, 1993 D.C. App. LEXIS 252 (1993).

Family division's probable cause determination of delinquency is properly subject to review by interlocutory appeal. D.C. Code § 16-2327.

In re R.D.S., 359 A.2d 136, 1976 D.C. App. LEXIS 291 (1976).

#### **Record on appeal.**

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by court in answering order, case would be remanded to superior court with directions that judge file statements of reasons for order or reconsider same. D.C. Code Court of Appeals Rules, rule 9(a)(2), (c)(2); D.C. Code § 16-2312(d); D.C. Code SCR, Juvenile Rule 106(a)(1). In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

#### **Review.**

If point has not been preserved for appeal, appellate court will disturb trial court's disposition only where error was plain and where reversal is required to avoid clear miscarriage of justice. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

#### **Time limits.**

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. D.C. Code §§ 11-721(a)(1), 16-2327, 16-2327(a, b), 22-504, 22-2801. In re M.L. DEJ., 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

## **§ 16-2329. Finality of judgments; appeals; transcripts.**

(a) Except as otherwise expressly provided by law, in all hearings and cases tried before the Division pursuant to this subchapter, the judgment of the Division is final.

(b) In all appeals from decisions of the Division with respect to a child alleged to be neglected, delinquent, or in need of supervision, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(c) Upon the filing of a motion and supporting affidavit stating that he is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal shall be furnished, at no cost or at such part of cost as he is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.

(d) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child.

(July 29, 1970, 84 Stat. 538, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2329.  
1973 Ed., § 16-2329.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

#### Review.

Sufficiency of evidence.

#### Review.

Where claim of ineffective assistance of counsel was not raised in juvenile branch until motion for new fact-finding hearing based on such claim was filed and where juvenile failed to file notice of appeal within ten days from denial of such motion, District of Columbia Court of Appeals was precluded from reaching ineffective assistance issue on appeal of finding of guilt, despite fact that parties had entered into stipulation that record of hearing on motion would be included as a "supplemental record" on appeal. D.C. Code SCR, Juvenile Rule 33; D.C. Code SCR, Criminal Rule 33. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

Parties cannot by simple expedient of entering into stipulation to bring up supplemental record confer jurisdiction on District of Columbia Court of Appeals that does not otherwise exist. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

Trial court is without jurisdiction to grant motion for new trial while an appeal is pending, but trial court nonetheless possesses power to deny motion and its denial will constitute an appealable order. D.C. Code SCR, Juvenile Rule 33; D.C. Code SCR, Criminal Rule 33. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

A ruling by the trial court denying a motion for a new trial or a motion for a new fact-finding hearing constitutes an appealable order where the motion was based on newly discovered evidence. D.C. Code SCR, Juvenile Rule 33; D.C. Code SCR, Criminal Rule 33. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

Thirty-day time limit on appeal is mandatory and jurisdictional. D.C. Code Court of Appeals Rules, rule 4, pt. II(a). In re C.I.T., 369 A.2d 171, 1977 D.C. App. LEXIS 422 (1977).

Appeal from order terminating natural father's parental rights had to be taken within 30 days and appeal filed within 30 days of subsequent order continuing commitment of children to Department of Human Resources with instructions to seek prompt adoptive placements was not timely. D.C. Code Court of Appeals Rules, rule 4, pt. II(a). In re C.I.T., 369 A.2d 171, 1977 D.C. App. LEXIS 422 (1977).

Appeal from conviction in Family Division of the Superior Court of assault with intent to commit murder was not moot because defendant, subsequent to hearing, was convicted as an adult in another criminal case and had been discharged from jurisdiction of Family Division of Superior Court, where there was possibility of adverse collateral effects in later criminal proceedings resulting from use of juvenile records which included findings in assault prosecution. In re S.W.B., 321 A.2d 564, 1974 D.C. App. LEXIS 233 (1974).

Finding by juvenile court that juvenile charged with burglary in the second degree and petit larceny was "involved as charged" did not constitute a "final order or judgment," and juvenile court's release of juvenile in his mother's custody with a warning did not constitute a "sentence," and Court of Appeals lacked jurisdiction to review action of juvenile court. D.C. Code §§ 11-741(a)(3), 16-2301 et seq., 16-2330, 22-1801(b), 22-2202. Langley v. District of Columbia, 277 A.2d 101, 1971 D.C. App. LEXIS 323 (1971).

#### Sufficiency of evidence.

In assessing sufficiency of evidence on appeal of conviction, District of Columbia Court of Appeals is required to give government benefit of all reasonable inferences and thus make full allowance for right of trier of fact to determine credibility, weigh the evidence, and draw justifiable inferences of fact. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

A conviction will not be reversed for insufficiency of evidence as long as there is evidence which reasonably permits a finding of guilt. In re E.G.C., 373 A.2d 903, 1977 D.C. App. LEXIS 321 (1977).

## § 16-2330. Time computation.

(a) In all proceedings in the Division, time limitations shall be reasonably construed by the Division for the protection of the community and of the child.

(b) The following periods shall be excluded in computing the time limits established for proceedings under this subchapter:



(1) The period of delay resulting from a continuance granted, upon grounds constituting unusual circumstances, at the request or with the consent, in any case, of the child or his counsel, or, in neglect cases, also of the parent, guardian, or custodian.

(2) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination or hearing on mental health or retardation and a hearing on a transfer motion.

(3) The period of delay resulting from a continuance granted at the request of the Corporation Counsel if the continuance is granted because of the unavailability of evidence material to the case, when the Corporation Counsel has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or if the continuance is granted to allow the Corporation Counsel additional time to prepare his case and additional time is required due to the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the case separately.

(July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Cross references.** — Finality of termination orders, see § 16-2362.

**Prior Codifications.** — 1981 Ed., § 16-2330.

1973 Ed., § 16-2330.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Due process.

In general.

Refiling charge.

Violations of time limits, generally.

### Due process.

Delay of five months between filing of petition in delinquency case and trial, even assuming that it required examination of other Barker factors, did not warrant dismissal for violation of juvenile's due process right to speedy trial, considering interest of justice and protection of juvenile; reasons for government's delay were found to be negligent, not deliberate or for purpose of gaining tactical advantage, juvenile made no claim or proffer as to how any unavailable, unknown witnesses would have aided his defense, juvenile was not denied any due process right to rehabilitative treatment given his committed status in connection with another case, fact that juvenile was almost 18

at time of disposition did not itself establish prejudice, and while juvenile moved to dismiss for government's delay in petitioning case, he did not move for prompt trial. U.S. Const. Amend. 14. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

### In general.

Primary goal of juvenile system is protection of child through treatment and rehabilitation, which is best achieved by prompt disposition directed toward effectuating that goal. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

### Refiling charge.

Where criminal charge is dismissed and then refiled, period between dismissal and refiling does not count for speedy trial purposes. U.S. Const. Amend. 6. In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

### Violations of time limits, generally.

Technical violation of time limitations set

forth in juvenile code section generally requiring government to file petition in delinquency case within seven days after complaint has been referred to Director of Social Services does not require automatic dismissal or preclude subsequent filing of petition after dismissal of case without prejudice for time limit violation, even though code section provides that petition "shall" be timely filed; whether sanction of dismissal of petition or some other sanction should be imposed will depend upon facts and circumstances of case and determination by trial court of appropriate sanction in exercise of its sound discretion. D.C. Code 1981, § 16-2305(d). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

Juvenile failed to establish that government's delay in petitioning delinquency case after initial dismissal resulted from more than

negligence, despite claim that government acted in bad faith in order to gain tactical advantage, and delay would therefore not support due process speedy trial claim; government's inability to file petition only two days after case was referred by United States Attorney's office, resulting in dismissal without prejudice, would not be viewed as evidencing lack of good faith, particularly as government represented that it required additional time to determine whether to prosecute juvenile as adult, and investigation by officer of federal government did not relieve Corporation Counsel of its statutory responsibility to make independent determination concerning whether to petition case. U.S. Const. Amend. 14; D.C. Code 1981, § 16-2305(c, d). In re D.H., 666 A.2d 462, 1995 D.C. App. LEXIS 206 (1995).

## § 16-2331. Juvenile case records; confidentiality; inspection and disclosure.

(a) For the purposes of this section, the term "juvenile case records" means the following records of a case over which the Family Court has jurisdiction under section 11-1101(13):

- (1) Notices filed with the court by an arresting officer pursuant to this subchapter;
- (2) The docket of the court and entries therein;
- (3) Complaints, petitions, and other legal papers filed in the case;
- (4) Transcripts of proceedings before the court;
- (5) Findings, verdicts, judgments, orders, and decrees; and
- (6) Other writings filed in proceedings before the court, other than social records.

(b) Except as otherwise provided in this section and in section 16-2333.01, juvenile case records shall be kept confidential and shall not be open to inspection, nor shall information from records inspected be divulged to unauthorized persons.

(c) Subject to the limitations of subsection (f) of this section, the following entities and persons may inspect juvenile case records:

- (1) The Courts:
  - (A) Judges and professional staff of the Superior Court; and
  - (B) Any court in which the respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff.
- (2) Family Court case participants:
  - (A) The Attorney General and his assistants assigned to the Family Court;
  - (B) The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;
  - (C) The parents or guardians and any attorney for them without regard



to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;

(D) Unless the release of the information is otherwise prohibited by law or includes mental health information, each victim, or the immediate family member or custodians of each victim if the victim is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General and when the information relates to:

- (i) Release status;
- (ii) The level of respondent's placement;
- (iii) Stay-away orders imposed;
- (iv) Respondent's participation in diversion or a consent decree;
- (v) The offenses charged in the petition;
- (vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case; or
- (vii) Commitment or probational status;

(E) Unless the release of information is otherwise prohibited by law or includes mental health information, each eyewitness, or the immediate family members or custodians of each eyewitness if the eyewitness is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General or of the respondent's attorney and when the information relates to:

- (i) Release status;
- (ii) The level of respondent's placement;
- (iii) Stay-away orders imposed;
- (iv) Respondent's participation in diversion or a consent decree;
- (v) The offenses charged in the petition;
- (vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case; or
- (vii) Commitment or probational status; and

(F) Public or private agencies or institutions providing supervision or treatment or having custody of the child, if supervision, treatment, or custody is under order of the Family Court;

(3) Other court case participants and law enforcement:

(A) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;

(B) Any law enforcement personnel when necessary for the discharge of their official duties;

(C) The Pretrial Services Agency of the District of Columbia when necessary for the discharge of its official duties; and

(D) The Court Services and Offender Supervision Agency for the District of Columbia when necessary for the discharge of its official duties;

(4) Government agencies and entities:

(A) The Mayor in accordance with [§ 50-1403.02];

(B) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District

of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

(C) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

(D) The Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this subparagraph;

(E) The Child and Family Services Agency, for the purposes of carrying out its official duties; and

(F) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

(5) Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent's family, or in the work of the Superior Court, if authorized by rule or special order of the court.

(d) The prosecuting attorney inspecting records pursuant to subsection (c)(3)(A) of this section may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Family Court.

(e) Notwithstanding subsection (b) of this section, the Family Court, upon application of the Attorney General, may order the release of certain information contained in the case record if:

(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

(2) Release of the information is necessary to protect the public safety and welfare; and

(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

(f) Notwithstanding subsections (b) and (c) of this section, the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection:

(1) In delinquency or need of supervision cases, by the attorney for the child; or

(2) In neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.



(g) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(h)(1) Notwithstanding subsection (b) of this section, for every respondent against whom the Office of the Attorney General has filed a petition for the following:

- (A) A crime of violence (as defined in section 23-1331(4));
- (B) A weapons offense;
- (C) Unauthorized use of a vehicle;
- (D) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or

(E) The Office of the Attorney General has filed 3 or more petitions against the respondent, and the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3), the Family Court shall provide, within 48 hours of the decision not to detain the respondent, the following case record information to the Chief of the Metropolitan Police Department ("Chief"):

- (i) Respondent's name and date of birth;
- (ii) Last known address of the respondent;
- (iii) Last known address of respondent's parents, guardians, caretakers, and custodians;
- (iv) Address where the respondent will be placed and the name and address of the person into whose custody the respondent will be placed; and
- (v) All terms of the placement or conditions of release.

(2) Notwithstanding subsection (b) of this section, the Family Court shall provide the following case record information to the Chief for all cases in which the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3) and cases in which the respondent is placed on probation pursuant to section 16-2320(c)(3):

- (A) Respondent's name and date of birth;
- (B) All terms or conditions of any stay-away order; and
- (C) All terms or conditions of any curfew order.

(3) The Chief shall utilize information obtained from the Family Court and may disclose such information to law enforcement officers or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

(4) If the Chief discloses information pursuant to paragraph (3) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2332 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

(5) If the petition filed against the juvenile does not result in disposition, the Family Court, within 48 hours of the entry of the decision by the court to dismiss or close the case, or the withdrawal of the petition by the Office of the Attorney General, shall notify the Chief of the Metropolitan Police Department that the case has not resulted in a disposition. The Chief shall, within 48 hours of the notification, destroy and erase from Metropolitan Police Department files the case record information received from the Family Court pursuant to this subsection and shall notify all parties and agencies to which it transmitted case record information pursuant to paragraph (3) of this subsection that the juvenile's case did not result in a disposition and any information that has been transmitted shall be destroyed and erased.

(i) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Mar. 16, 1989, D.C. Law 7-222, § 4, 36 DCR 570; May 15, 1993, D.C. Law 9-272, § 105, 40 DCR 796; Apr. 9, 1997, D.C. Law 11-255, § 18(h), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 10(dd), 45 DCR 745; Oct. 3, 2001, D.C. Law 14-28, § 4620(b), 48 DCR 6981; Mar. 17, 2005, D.C. Law 15-261, § 302(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(b), 54 DCR 794; Dec. 4, 2010, D.C. Law 18-273, § 210(a), 57 DCR 7171; Mar. 8, 2011, D.C. Law 18-284, §§ 3(c), 4, 57 DCR 10477.)

**Prior Codifications.** — 1981 Ed., § 16-2331.

1973 Ed., § 16-2331.

**Effect of amendments.** — D.C. Law 14-28, in subsec. (b), made nonsubstantive changes in pars. (8) and (9), and added par. (10).

D.C. Law 15-261, in subsec. (b), added pars. (3A), (11), (12), and (13), rewrote pars. (4), (6), (9), and substituted a period for a semicolon at the end of par. (10); and added subsec. (b-1).

D.C. Law 16-274 added subsec. (d-1).

D.C. Law 18-273 added subsec. (b)(9A).

D.C. Law 18-284 repealed the amendment by Law 18-273, § 210, and rewrote the section, which formerly read:

"(a) As used in this section, the term 'juvenile case records' refers to the following records of a case over which the Division has jurisdiction under section 11-1101(13):

"(1) Notices filed with the court by an arresting officer pursuant to this subchapter.

"(2) The docket of the court and entries therein.

"(3) Complaints, petitions, and other legal papers filed in the case.

"(4) Transcripts of proceedings before the court.

"(5) Findings, verdicts, judgments, orders, and decrees.

"(6) Other writings filed in proceedings before the court, other than social records.

"(b) Juvenile case records shall be kept confidential and shall not be open to inspection;

but, subject to the limitations of subsection (c) of this section, the inspection of those records shall be permitted to —

"(1) judges and professional staff of the Superior Court;

"(2) the Corporation Counsel and his assistants assigned to the Division;

"(3) the respondent, his parents or guardians, and their duly authorized attorneys;

"(3A) at the discretion of the Corporation Counsel, each eyewitness, victim, or the immediate family members or custodians of each eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the information relates to release status, the level of respondent's placement, stay-away orders imposed, respondent's participation in diversion or a consent decree, the offenses charged in the petition, the terms of any plea agreements, findings, or verdicts related to the adjudication of the case, or commitment or probational status, unless the release of such information is otherwise prohibited by law or includes mental health information;

"(4) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, and counsel for the respondent or defendant in that case;

"(5) public or private agencies or institutions providing supervision or treatment or having



custody of the child, if supervision, treatment, or custody is under order of the Division;

"(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;

"(7) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Superior Court, if authorized by rule or special order of the court.

"(8) the Mayor in accordance with the Motor Vehicle Operator's Permit Revocation Amendment Act of 1988;

"(9) authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

"(9A) Authorized persons for the purposes of and in accordance with Chapter 2A of Title 7;

"(10) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

"(11) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph;

"(12) the Child and Family Services Agency, for the purposes of carrying out its official duties;

"(13) any law enforcement personnel when necessary for the discharge of their official duties.

"(b-1) Records inspected may not be divulged to unauthorized persons. The prosecuting attorney inspecting records pursuant to paragraph (6) of this subsection may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Division.

"(b-2) Notwithstanding subsection (b) of this section, the Division, upon application of the

Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the case record if:

"(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

"(2) Release of such information is necessary to protect the public safety and welfare; and

"(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

"(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

"(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

"(d-1)(1) Notwithstanding subsections (b), (b-1), (b-2), (c), or (d) of this section, for every respondent whom the Office of the Attorney General has filed a petition against for the following: (i) a crime of violence (as defined in section 23-1331(b)); (ii) a weapons offense; (iii) unauthorized use of a vehicle; (iv) theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or (v) the Office of the Attorney General has filed 3 or more petitions against the respondent, and the respondent is not detained by the Family Court of the Superior Court of the District of Columbia pursuant to section 16-2313(b)(3), the Family Court shall provide, within 48 hours of the decision not to detain the respondent, the following case record information to the Chief of the Metropolitan Police Department ('Chief'):

"(A) Respondent's name and date of birth;

"(B) Last known address of the respondent;

"(C) Last known address of respondent's parents, guardians, caretakers, and custodians;

"(D) Address to which the respondent will be placed and the name and address of the person into whose custody the respondent will be placed; and

“(E) All terms of the placement or conditions of release.

“(2) Notwithstanding subsections (b), (b-1), (b-2), (c), or (d) of this section, the Family Court shall provide the following case record information to the Chief for all cases in which the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3) and cases in which the respondent is placed on probation pursuant to section 16-2320(c)(3):

“(A) Respondent's name and date of birth;

“(B) All terms or conditions of any stay-away order; and

“(C) All terms or conditions of any curfew order.

“(3) The Chief shall utilize information obtained from the Family Court and may disclose such information to law enforcement officers or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

“(4) If the Chief discloses information pursuant to paragraph (3) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2332 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

“(5) If the petition filed against the juvenile does not result in disposition, the Family Court, within 48 hours of the entry of the decision by the court to dismiss or close the case, or the withdrawal of the petition by the Office of the Attorney General, shall notify the Chief of the Metropolitan Police Department that the case has not resulted in a disposition. The Chief shall, within 48 hours of the notification, destroy and erase from Metropolitan Police Department files the case record information received from the Family Court pursuant to this subsection and shall notify all parties and agencies to which it transmitted case record information pursuant to paragraph (3) of this subsection that the juvenile's case did not result in a disposition and any information that has been transmitted shall be destroyed and erased.

“(e) No person shall disclose, inspect, or use records in violation of this section.”

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 2(b) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C.

Law 14-20, September 6, 2001, law notification 48 DCR 9090).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 20(b) of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 20(b) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) amendment of section, see § 201(b) of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 301(b) of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 201(b) of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

For temporary (90 day) amendment of section, see § 210(a) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 210(a) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 7-222.** — For legislative history of D.C. Law 7-222, see Historical and Statutory Notes following § 16-2318.

**Legislative history of Law 9-272.** — For legislative history of D.C. Law 9-272, see Historical and Statutory Notes following § 16-2307.

**Legislative history of Law 11-255.** — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-2309.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 14-28.** — For Law 14-28, see notes following § 16-311.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-274.** — For Law 16-274, see notes following § 16-2301.

**Legislative history of Law 18-273.** — Law 18-273, the “Data-Sharing and Information Co-



ordination Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-356 which was referred to the Committee on Health and Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 29, 2010, respectively. Signed by the Mayor on July 20, 2010, it was assigned Act No. 18-489 and transmitted to both Houses of Congress for its review. D.C. Law 18-273 became effective on December 4, 2010.

**Legislative history of Law 18-284.** — Law

18-284, the "Expanding Access to Juvenile Records Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-344, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on July 13, 2010, and October 19, 2010, respectively. Signed by the Mayor on November 3, 2010, it was assigned Act No. 18-594 and transmitted to both Houses of Congress for its review. D.C. Law 18-284 became effective on March 8, 2011.

## **§ 16-2332. Juvenile social records; confidentiality; inspection and disclosure.**

(a) For the purposes of this section, the term "juvenile social records" means all social records made with respect to a child in any proceedings over which the Family Court has jurisdiction under section 11-1101(13), including preliminary inquiries, predisposition studies, and examination reports.

(b) Except as otherwise provided in this section and in section 16-2333.01, juvenile social records shall be kept confidential and shall not be open to inspection.

(c) Subject to the limitations of subsection (e) of this section, the following persons and entities may inspect juvenile social records:

(1) Courts:

(A) Judges and professional staff of the Superior Court; and

(B) Any court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case;

(2) Family Court case participants:

(A) The Attorney General and his assistants assigned to the Family Court;

(B) The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case; and

(C) Public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment, or custody is under the order of the Family Court;

(3) Other court case participants and law enforcement:

"Law enforcement officers of the United States, the District of Columbia, and other jurisdictions when a custody order has issued for the respondent, except that such records shall be limited to photographs of the child, a physical description of the child, and any addresses where the child may be found, and the law enforcement officer may not be permitted access to any other documents or information contained in the social file;

(4) Government agencies and entities:

(A) Professional employees of the Department of Youth Rehabilitation Services when necessary for the discharge of their official duties;

(B) The Child and Family Services Agency when necessary for the discharge of its official duties;

(C) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the

District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

(D) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families; and

(5) Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent's family, or in the work of the Family Court, if authorized by rule or special order of the court.

(d)(1) Except as otherwise provided in this section and in section 16-2333.01, records inspected pursuant to subsection (c) of this section may not be divulged to unauthorized persons.

(2)(A) Notwithstanding paragraph (1) of this subsection, health and human services information contained with juvenile social records may be divulged for the purposes of and in accordance with [Chapter 2A Title 7].

(B) For the purposes of this paragraph, the term "health and human services information" shall have the same meaning as provided in [§ 7-241(3)].

(e) Notwithstanding subsections (b) and (c) of this section, the Superior Court may by rule or special order provide that particular items or classes of items in juvenile social records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection:

(1) In delinquency or need of supervision cases, by the attorney for the child; or

(2) In neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(f) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile social records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(g)(1) Notwithstanding subsections (b), (c), (d), or (e) of this section, for every respondent committed to the Department of Youth Rehabilitation Services ("Department") pursuant to section 16-2320(c)(2) who has been adjudicated of:

(A) A crime of violence (as defined in section 23-1331(4));

(B) A weapons offense;

(C) Unauthorized use of a vehicle;

(D) Theft in the first degree where property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or

(E) Adjudicated 3 or more times, the Mayor may direct the Director of the Department ("Director") to provide notice to the Chief of the Metropolitan Police Department ("Chief") of any assignment or placement of the respondent in a Department facility or residential or other placement, including any facility operated by a contractor or agent, as soon as practicable prior to the assignment or placement.



(2) Notwithstanding subsections (b), (c), (d), or (e) of this section, for any respondent who is detained or committed to the Department, the Director shall provide notice to the Chief of any respondent who has absconded or escaped from any Department facility, or residential or other placement, including any facility or placement operated by an agent or contractor, within one hour of the absconding or escaping.

(3) Notice issued pursuant to this subsection shall include the following information, as applicable:

(A) Respondent's name and date of birth;

(B) Last known address of the respondent;

(C) Last known address of the respondent's parents, guardians, caretakers, and custodians;

(D) Address to which the respondent will be assigned, placed, or released and the name and address of the person into whose custody the respondent will be placed if the respondent is not placed into a Department facility; and

(E) A recent photograph of the respondent, if available.

(4) The Chief shall utilize information obtained from the Director and may disclose such information to law enforcement persons or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

(5) If the Chief discloses information pursuant to paragraph (4) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2331 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

(6) The Chief may make additional case-specific inquiries to the Mayor based on information disclosed under paragraph (1) of this subsection. The Mayor may direct the Director to provide such additional information, when requested by the Chief, but only as necessary to protect public safety or the safety of the respondent.

(h) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 540, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(g), title IV, § 408(a), 24 DCR 3341; Oct. 3, 2001, D.C. Law 14-28, § 4620(c), 48 DCR 6981; Mar. 17, 2005, D.C. Law 15-261, § 302(b), 52 DCR 1188; Mar. 2, 2007, D.C. Law 16-191, §§ 43, 132, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-274, § 2(c), 54 DCR 864; Dec. 4, 2010, D.C. Law 18-273, § 210(b), 57 DCR 7171; Mar. 8, 2011, D.C. Law 18-284, §§ 3(d), 4, 57 DCR 10477.)

**Cross references.** — Confidentiality of juvenile records, see § 16-2363.

**Prior Codifications.** — 1981 Ed., § 16-2332.

1973 Ed., § 16-2332.

**Effect of amendments.** — D.C. Law 14-28, in subsec. (b), made nonsubstantive changes in pars. (4), (5), and (6), and added par. (7).

D.C. Law 15-261, in subsec. (b), made nonsubstantive changes at the end of pars. (6) and (7), and added pars. (8), (9), and

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 20(c) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 20(c) of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 20(c) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) amendment of section, see § 201(c) of Enhanced Crime Prevention and Abatement Emergency Amendment Act of 2006 (D.C. Act 16-446, July 21, 2006, 53 DCR 6477).

For temporary (90 day) amendment of section, see § 301(c) of Crime Reduction Initiative Emergency Amendment Act of 2006 (D.C. Act 16-491, October 19, 2006, 53 DCR 8818).

For temporary (90 day) amendment of section, see § 201(c) of Crime Reduction Initiative Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-9, January 16, 2007, 54 DCR 1471).

For temporary (90 day) amendment of section, see § 210(b) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 210(b) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 14-28.** — For Law 14-28, see notes following § 16-311.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 16-191.** — For Law 16-191, see notes following § 16-910.

**Legislative history of Law 16-274.** — For Law 16-274, see notes following § 16-2301.

**Legislative history of Law 18-273.** — For Law 18-273, see notes following § 16-2331.

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

**Mayor's Orders.** — Mayor's Direction under the Mandatory Juvenile Public Safety Notification Amendment Act of 2006, see Mayor's Order 2010-2, January 22, 2010 (57 DCR 1002).

## § 16-2333. Police and other law enforcement records.

(a) Except as otherwise provided in this section and in section 16-2333.01, law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless:

(1) A charge of delinquency is transferred for criminal prosecution under section 16-2307;

(1A) The record pertains to a civil Notice of Violation;

(2) The interest of national security requires; or

(3) The court otherwise orders in the interest of the child.

(b) Inspection of such records and files is permitted by:

(1) Courts:

(A) The Superior Court, having the child currently before it in any proceedings; and

(B) Any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, or by officials of rehabilitation or penal institutions and other rehabilitation or penal facilities to which he is commit-



ted, or by a parole board in considering his parole or discharge or in exercising supervision over him;

(2) Case participants:

(A) The child and any attorney for the child without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

(B) Parents or guardians of the child and any attorney for them without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

(C) Each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorneys, when the records relate to the incident in which they were an eyewitness or a victim; and

(D) The officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for the child's supervision after release;

(3) Prosecutors and law enforcement:

(A) Law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

(B) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;

(4) Government agencies and entities:

(A) Professional employees of the Department of Youth Rehabilitation Services when necessary for the discharge of their official duties;

(B) The Child Fatality Review Committee when necessary for the discharge of its official duties;

(C) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

(D) The Children's Advocacy Center and the public and private agencies and institutions that are members of the multi-disciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records of copies of the records, may be provided pursuant to this subparagraph; and

(E) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

(5) Any other person, agency, or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department.

(c) The Family Court, upon application of the Attorney General and notice and opportunity for respondent or his counsel to respond to the application,

may order the release of certain information contained in the law enforcement records if:

(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

(2) Release of such information is necessary to protect the public safety and welfare; and

(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

(d) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

(e)(1) Certain juvenile crime information (but not records) shall not be confidential and shall be disclosable to the public strictly in accordance with the provisions of this subsection.

(2) The public availability of the information regarding a child shall be limited to:

(A) The child's name;

(B) The fact that the child was arrested;

(C) The charges at arrest;

(D) The charges in the petition filed pursuant to section 16-2305;

(E) Whether the petition resulted in an adjudication and the charges for which the child was found involved; and

(F) If the child was found involved, whether at initial disposition the child was placed on probation or committed to the custody of the Department of Youth Rehabilitation Services.

(3) The information shall be available only regarding:

(A) A juvenile who has been adjudicated delinquent of a crime of violence (as defined in section 23-1331(4)), or any felony offense under Chapter 45 of Title 22 (weapons) [§ 22-4501 et seq.] or Chapter 23 of Title 6 (Firearms Control) [Chapter 25 of Title 7, § 7-2501.01 et seq. (2001 Ed.)];

(B) A juvenile who has been adjudicated delinquent 2 or more times of:

(i) A dangerous crime (as defined in section 23-1331(3)) that is not included in subparagraph (A) of this paragraph;

(ii) Unauthorized use of a vehicle;

(iii) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a));

(iv) A assault [Assault] (as defined in section 22-404(a)(2)); or

(v) Any combination thereof; and

(C) An adult offender (including a juvenile tried as an adult under this chapter) convicted of a felony or of misdemeanor assault; provided, that no more than 3 years have lapsed between the completion of his or her juvenile sentence and the adult conviction.

(4) This subsection permits the limited disclosure of information contained in records and files otherwise protected from disclosure under § 16-2333, but does not authorize disclosure of the records and files.

(5) This subsection shall apply only to individuals adjudicated after January 1, 2011, regardless of when the criminal offense occurred.



(6) Any law enforcement information shared with the public shall comply with Metropolitan Police Regulations that apply to adult criminal records, including the Duncan Ordinance (Chapter 10 of Title 1 of the District of Columbia Municipal Regulations)."

(f) Notwithstanding the confidentiality requirements of subsection (b) of this section, the Metropolitan Police Department shall make reports available to the public every 6 months of the number of children arrested in the District by the location of the police service area within which the juvenile suspect lives, and giving the location of the police service area within which the crime occurred, the charges, and the date of the crime.

(g) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 541, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(h), title IV, § 408(a), 24 DCR 3341; Oct. 3, 2001, D.C. Law 14-28, § 4620(d), 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 10(d), 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 302(c), 52 DCR 1188; Dec. 4, 2010, D.C. Law 18-273, § 210(c), 57 DCR 7171; Mar. 8, 2011, D.C. Law 18-284, §§ 3(e), 4, 57 DCR 10477; June 3, 2011, D.C. Law 18-377, § 6(b), 58 DCR 1174.)

**Cross references.** — Confidentiality of juvenile records, see § 16-2363.

**Prior Codifications.** — 1981 Ed., § 16-2333.

1973 Ed., § 16-2333.

**Effect of amendments.** — D.C. Law 14-28, in subsec. (b), made nonsubstantive changes in pars. (6), (7), and (8), and added par. (9).

D.C. Law 15-105, in subsec. (b)(9), substituted "the Child" for "The Child".

D.C. Law 15-261, in subsec. (b), added par. (4A), rewrote par. (5), made nonsubstantive changes to the end of pars. (8) and (9), and added pars. (10), (11), and (12); and added subsec. (b-1). Prior to amendment, par. (5) of subsec. (b) read as follows: "(5) a court in which a person is charged with a criminal offense for the purposes of determining conditions of release or bail;"

D.C. Law 18-273 added subsec. (b)(10A).

D.C. Law 18-284 repealed the amendment by Law 18-273, § 210, and rewrote the section, which formerly read:

"(a) Law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless a charge of delinquency is transferred for criminal prosecution under section 16-2307, the interest of national security requires, or the court otherwise orders in the interest of the child.

"(b) Inspection of such records and files is permitted by —

"(1) the Superior Court, having the child currently before it in any proceedings;

"(2) the officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for his supervision after release;

"(3) any other person, agency or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department;

"(4) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

"(4A) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;

"(5) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, and counsel for the respondent or defendant in that case;

"(6) a court in which a person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

"(7) the parent, guardian, or other custodian and counsel for the child;

"(8) professional employees of the Social Rehabilitation Administration of the Department of Human Services when necessary for the discharge of their official duties;

"(9) the Child Fatality Review Committee when necessary for the discharge of its official duties;

"(10) authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

"(10A) authorized persons for the purposes of and in accordance with Chapter 2A of Title 7; except, that the information derived from termination of parental rights and guardianship proceedings shall not be disclosed without the prior written consent of the identified individual, as that term is defined in § 7-241(6).

"(11) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph; and

"(12) each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the records relate to the incident in which they were an eyewitness or a victim.

"(b-1) Notwithstanding subsection (b) of this section, the Division, upon application of the Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if:

"(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

"(2) Release of such information is necessary to protect the public safety and welfare; and

"(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

"(c) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

"(d) No person shall disclose, inspect, or use records or files in violation of this section."

D.C. Law 18-377 added subsec. (a)(1A).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 6 of the Attendance and School Safety Temporary Act of 2000 (D.C. Law 13-151, July 18, 2000, law notification 47 DCR 6101).

For temporary (225 day) amendment of section, see § 20(d) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

**Temporary Addition of Section.** — For temporary (225 day) addition of sections, see §§ 2 to 6 of the Attendance and School Safety Temporary Act of 2000 (D.C. Law 13-151, July 18, 2000, law notification 47 DCR 6101).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 6 of the Attendance and School Safety Emergency Act of 2000 (D.C. Act 13-319, April 17, 2000, 47 DCR 2882).

For temporary (90 day) amendment of section, see § 20(d) of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 20(d) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) amendment of section, see § 210(c) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 210(c) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

For temporary (90 day) amendment of section, see § 506(b) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 506(b) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 14-28.** — For Law 14-28, see notes following § 16-311.

**Legislative history of Law 15-105.** — For Law 15-105, see notes following § 16-1005.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

**Legislative history of Law 18-273.** — For Law 18-273, see notes following § 16-2331.

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

**Legislative history of Law 18-377.** — For history of Law 18-377, see notes under § 16-711.01.



### § 16-2333.01. Permitted disclosures of juvenile information.

(a) An official of the Family Court, the Department of Youth Rehabilitation Services, or the Metropolitan Police Department may disclose information (but not records) about a juvenile otherwise protected from disclosure under sections 16-2331, 16-2332, and 16-2333 in accordance with this section only if:

(1) In the professional judgment of the official, disclosing the information will assist in the protection, welfare, treatment, or rehabilitation of the juvenile;

(2) A professional relationship exists between the official and the juvenile; and

(3) The general nature of the disclosure, and rationale for making the disclosure, is approved by the official's supervisor or agency director.

(b) Information disclosed under this section may be disclosed only to:

(1) A principal, teacher, or counselor at a school that the juvenile attends or has attended; or

(2) A mental health professional as that term is defined in section 7-1201.01(11).

(c) The information that may be disclosed under this section shall be limited to:

(1) The juvenile's name;

(2) Whether the juvenile is or has been on probation or in the custody of the Department;

(3) Whether the juvenile has violated the terms of probation or absconded while in the custody of the Department;

(4) Whether the juvenile has been arrested by the Metropolitan Police Department, or another law enforcement agency, and the charges brought against the juvenile; and

(5) The disposition of the charges brought against the juvenile.

(d) Information disclosed pursuant to this section shall be:

(1) Kept confidential and shall not be disclosed by the recipient to another individual or entity except in accordance with section 16-2331, 16-2332, or 16-2333; and

(2) Limited to the greatest extent possible consistent with its express purpose.

(e) This section permits the limited disclosure of information contained in records and files otherwise protected from disclosure under sections 16-2331, 16-2332, and 16-2333, but does not authorize disclosure of the records and files.

(Mar. 8, 2011, D.C. Law 18-284, § 3(f), 57 DCR 10477.)

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

**§ 16-2333.02. Juvenile Abscondence Review Committee.**

(a) For the purposes of this section, the term “abscondence” means the status of a youth who is in the custody of the Department and:

(1) Has escaped from detention at New Beginnings or the Youth Services Center and for whom the Department has requested a custody order from the court; or

(2) Has violated his or her Community Release Agreement with the Department by not maintaining contact with his or her case manager or by leaving the place of community placement and for whom the Department has requested a custody order from the court.

(b)(1) There is established, as part of the District of Columbia government, a Juvenile Abscondence Review Committee (“Committee”). Facilities and other administrative support may be provided in a specific department or directly to the Committee, as determined by the Mayor.

(2) The Committee shall:

(A) Identify cases in which a homicide, assault with intent to kill, or assault with a deadly weapon (firearm), was committed by or to a juvenile in abscondence;

(B) Examine what steps could have been taken to prevent the juvenile from absconding; and

(C) Recommend systemic improvements to identify and locate high risk youth that are in abscondence and have the propensity to commit or be involved in a homicide, assault with intent to kill, or assault with a deadly weapon.

(c)(1) The following shall be members of the Committee:

(A) The Director of the Department of Youth Rehabilitation Services, or his or her designee;

(B) The Chief of the Metropolitan Police Department, or his or her designee;

(C) The Chief Judge of the Superior Court, or his or her designee;

(D) The United States Attorney for the District of Columbia, or his or her designee; and

(E) A public member, appointed by the Mayor, with advice and consent of the Council, who shall serve a 2-year term.

(2) All members of the Committee (including their designees) shall have expertise in programs providing services to children or in locating high-risk youth who are in abscondence and have the propensity to commit or be involved in a violent crime.

(3) The chairman of the committee of the Council responsible for public safety and the judiciary and the chairman of the committee responsible for oversight of the Department of Youth Rehabilitation Services (but not their designees) shall serve as ex officio members.

(4) Vacancies in membership shall be filled in the same manner in which the original appointment was made.

(5) The Committee shall establish quorum and other procedural requirements as it considers necessary.



(d)(1) Notwithstanding the confidentiality requirements of sections 16-2331 and 16-2333, the Committee shall make a report available to the public of its findings and information related to a juvenile in abscondence within 6 months of the occurrence of the crime for which the juvenile was the victim or the alleged perpetrator.

(2) The report shall include only information that could be released under and in accordance with section 16-2333(e).

(3) The report shall not include any information that:

(A) Interferes with an ongoing law enforcement investigation or proceeding pertaining to the homicide, assault with intent to kill, or assault with a deadly weapon;

(B) Deprives a person of a right to a fair trial or an impartial adjudication;

(C) Endangers the life or safety of any person; or

(D) Is in violation of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936).

(Mar. 8, 2011, D.C. Law 18-284, § 3(f), 57 DCR 10477.)

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

## § 16-2334. Fingerprint records.

(a) The contents or existence of law enforcement records and files of the fingerprints of a child shall not be disclosed by the custodians thereof, except—

(1) to a law enforcement officer of the United States, the District of Columbia, or other jurisdiction for purposes of the investigation and trial of a criminal offense; or

(2) pursuant to rule or special order of the court.

(b) When a child is transferred for criminal prosecution under section 16-2307, law enforcement records and files of his fingerprints relating to any matter so transferred shall be deemed those of an adult.

(c) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 542, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2334.  
1973 Ed., § 16-2334.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### Criminal penalties.

Juvenile who admitted possessing crack cocaine in delinquency proceedings could not be immediately placed on probation under provision of Controlled Substance Act authorizing court to place first time drug offender on pro-

bation without judgment of guilty; statute applied only in criminal proceedings and protections of juvenile proceeding were adequate. D.C. Code 1981, §§ 16-2331(b), 16-2332(b), 16-2333(a), 16-2334(a), 33-541(e). In re D.F.S., 684 A.2d 1281, 1996 D.C. App. LEXIS 244 (1996).

**§ 16-2335. Sealing of records.**

(a) On motion of a person who has been the subject of a petition filed pursuant to section 16-2305, or on the Division's own motion, the Division shall vacate its order and findings and shall order the sealing of the case and social records referred to in sections 16-2331 and 16-2332 and the law enforcement records and files referred to in section 16-2333, or those of any other agency active in the case if it finds that —

(1)(A) a neglected child has reached his majority; or

(B) two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and

(2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.

(b) Reasonable notice of a motion shall be given to —

(1) the person who is the subject of the petition;

(2) the Corporation Counsel;

(3) the authority granting the discharge, if the final discharge was from an institution, parole, or probation; and

(4) the law enforcement department having custody of the files and records specified in section 16-2333.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred. All facts relating to the action including arrest, the filing of a petition, and the adjudication, filing, and disposition of the Division shall no longer exist as a matter of law. The Division, the law enforcement department, or any other department or agency that received notice under subsection (b) and was named in the order shall reply, and the person who is the subject matter of the records may reply, to any inquiry that no record exists with respect to such person.

(d) Inspection of the files and records included in the order may thereafter be permitted by the Division only upon motion by the person who is the subject of such records, and may be made only by those persons named in the motion; but the Division in its discretion may, by special order in an individual case, permit inspection by or release of information in the records to the Child Fatality Review Committee, where necessary for the discharge of its official duties, and persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the person who is the subject of the petition or other members of his family.

(e) Any adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the vacating and sealing order.

(f) A person who has been the subject of a petition filed under this subchapter shall be notified of his rights under subsection (a) at the time a dispositional order is entered and again at the time of his final discharge from supervision, treatment, or custody.

(g) No person shall disclose, receive, or use records in violation of this section.



(h) Notwithstanding the availability of information pursuant to section 16-2333(e), a juvenile shall not be required to disclose and shall have the right to refuse disclosure of his or her juvenile delinquency history in an application for employment, education, or housing.

(July 29, 1970, 84 Stat. 542, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(ee), 45 DCR 745; Oct. 3, 2001, D.C. Law 14-28, § 4620(e), 48 DCR 6981; Mar. 8, 2011, D.C. Law 18-284, § 3(g), 57 DCR 10477.)

**Prior Codifications.** — 1981 Ed., § 16-2335.

1973 Ed., § 16-2335.

**Effect of amendments.** — D.C. Law 14-28, in subsec. (d), inserted “the Child Fatality Review Committee, where necessary for the discharge of its official duties, and” after “in the records to”.

D.C. Law 18-284 added subsec. (h).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 20(e) of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 20(e) of Child Fatality Review Committee Establish-

ment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 20(e) of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 14-28.** — For Law 14-28, see notes following § 16-311.

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

## CASE NOTES

### ANALYSIS

**Examination of witnesses.**  
In general.

### Examination of witnesses.

A defendant's juvenile adjudications may not be used for impeachment of a defendant's character witness. D.C. Code 1981, §§ 16-2316(e), 16-2331, 16-2335. *McAdoo v. United States*, 515 A.2d 412, 1986 D.C. App. LEXIS 432 (1986).

### In general.

While conduct against the state may properly subject an individual to limitations on his fu-

ture freedom, ancient or juvenile transgressions long since expiated by responsible conduct should not be indiscriminately broadcast under governmental auspices. 18 U.S.C. § 5021(b); U.S. Const. Amendments. 1, 4, 15. *Doe v. Webster*, 606 F.2d 1226, 1979 U.S. App. LEXIS 12956 (C.A.D.C. 1979).

Court's authority to seal juvenile records is not founded on doctrine of *parens patriae*; Congress has limited authority of the court, which may seal juvenile records only when statutory requirements are satisfied. D.C. Code §§ 16-2334, 16-2334(a). *In re R.T.*, 345 A.2d 156, 1975 D.C. App. LEXIS 245 (1975).

## § 16-2335.01. Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence.

(a) A person adjudicated delinquent in the Superior Court may move the court to vacate the adjudication or to grant a new factfinding hearing on grounds of actual innocence based on new evidence.

(b) Notwithstanding the time limits in any other provision of law, a motion for relief under this section may be made at any time.

(c) The motion shall set forth specific, non-conclusory facts:

(1) Identifying the specific new evidence;

(2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been adjudicated at a new factfinding hearing or having pled guilty; and

(3) Establishing why the new evidence is not cumulative or impeaching.

(d)(1) The motion shall include an affidavit by the movant, under penalty of perjury, stating that movant is actually innocent of the crime that is the subject of the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage.

(2) The denial of a motion for relief under this section shall not be admissible in any prosecution based on the filing of a false affidavit.

(e)(1) Unless the motion and files and records of the case conclusively show that the movant is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

(2) The court may appoint counsel for an indigent movant under this section pursuant to Chapter 26 of Title 11 [§ 11-2601 et seq.].

(3) The court may entertain and determine the motion without requiring production of the movant at the hearing.

(4) A movant shall be entitled to invoke the processes of discovery available under Superior Court Rules of Juvenile Procedure or Civil Procedure, or elsewhere in the usages and principles of law if, and to the extent that, the judge, in the exercise of the judge's discretion and for good cause shown, grants leave to do so, but not otherwise.

(f) A motion for relief made pursuant to this section may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(g)(1) In determining whether to grant relief, the court may consider any relevant evidence, but shall consider the following:

(A) The new evidence;

(B) How the new evidence demonstrates actual innocence;

(C) Why the new evidence is or is not cumulative or impeaching;

(D) If the adjudication resulted from a factfinding hearing, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at the factfinding hearing; and

(E) If the adjudication resulted from a guilty plea, the specific reason the movant pleaded guilty despite being actually innocent of the crime.

(2) If, after considering the factors in paragraph (1) of this subsection, the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new factfinding hearing.

(3) If, after considering the factors in paragraph (1) of this subsection, the court concludes by clear and convincing evidence that the movant is actually



innocent of the crime, the court shall vacate the adjudication and dismiss the relevant count with prejudice.

(4) If the adjudication resulted from a plea of guilty, and other charges were dismissed as part of a plea agreement, the court shall reinstate any charges of which the respondent has not demonstrated that the respondent is actually innocent.

(h) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant.

(i) An order entered on the motion is a final order for purposes of appeal.

(Mar. 8, 2011, D.C. Law 18-284, § 3(h), 57 DCR 10477.)

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

## **§ 16-2335.02. Sealing of records on ground of actual innocence.**

(a) Notwithstanding section 16-2335, a person who has been arrested for violation of the District of Columbia Official Code or the District of Columbia Municipal Regulations, or has been the subject of a petition filed pursuant to section 16-2305 and whose prosecution has been terminated without adjudication may file a motion with the Family Court at any time to seal all of the records of the arrest and related court proceedings on grounds of actual innocence.

(b) The burden is on the movant to establish that:

(1) The violation for which the person was arrested or petitioned did not occur; or

(2) The movant did not commit the offense.

(c) If the motion is filed within 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by a preponderance of the evidence.

(d) If the motion is filed more than 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by clear and convincing evidence.

(e) In determining such motions, the Family Court may, but is not required to, employ a rebuttable presumption that the movant is not entitled to relief if the court finds that the government has been substantially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(f) An acquittal does not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

(g) A person whose adjudication has been vacated pursuant to section 16-2335.01(g)(2), and whose subsequent prosecution is terminated without adjudication, may file a motion with the Family Court pursuant to subsection (a) of this section or any other provision of law.

**§ 16-2335.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS**

(h) A person who is found to be actually innocent pursuant to this section or section 16-2335.01(g)(3) shall be entitled to the following relief with respect to such count or counts:

(1)(A) The Family Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.

(B) A copy of the order shall be provided to the movant or his or her counsel.

(C) The movant may obtain a copy of the order at any time from the Family Court, upon proper identification, without a showing of need.

(2)(A) In a case involving co-respondents or co-defendants in which the Family Court orders the movant's records sealed, the Family Court may order that only those records, or portions thereof, relating solely to the movant be sealed.

(B) The Family Court shall order that the movant's name be redacted to the extent practicable from records that are not sealed. The Family Court may make an in camera inspection of these records in order to make this determination.

(C) The Family Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving the co-defendants.

(D) After references to the movant have been redacted as provided for in this paragraph, the Court shall order those records relating to co-defendants returned to the prosecutor or the Clerk of the Superior Court ("Clerk").

(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(4) The Court shall:

(A) Order the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court to seal any records that identify the movant as having been arrested, prosecuted, or adjudicated;

(B) Order the prosecutor to arrange for any computerized record of the movant's arrest, prosecution, or adjudication to be eliminated except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court; and

(C) Expressly allow the prosecutor and law enforcement agencies to maintain a publicly available record so long as it is not retrievable by the identification of the movant.

(5) The Family Court shall order the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court to file a certification with the



Court within 90 days of an order to seal the records that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or adjudicated have been sealed.

(6) The Family Court shall:

(A) Order the Clerk to collect all Family Court records pertaining to the movant's arrest, record, or adjudication and cause to be purged any computerized record;

(B) Expressly allow the Clerk to maintain a record so long as the record is not retrievable by the identification of the movant; and

(C) Order the Clerk to file under seal all Family Court records retrieved pursuant to this section, together with the certifications filed pursuant to this subsection by the prosecutor, any relevant law enforcement agency, the Department of Youth Rehabilitative Services, and any other public or private agencies or institutions that provided supervision or treatment, or had custody of the person, if the supervision, treatment, or custody was under an order issued by the Family Court, within 7 days after receipt of such records.

(7) The Clerk shall place the records ordered sealed by the Family Court in a special file, appropriately and securely indexed in order to protect its confidentiality. Unless otherwise ordered by the Family Court, the Clerk shall reply in response to inquiries concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(8) Once notified, any District agency in possession of a person's record shall seal, expunge, and otherwise maintain the record so that the record is in compliance with any order issued by the Family Court pursuant to this section.

(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested or charged. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.

(j) A motion to seal filed with the Family Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the prosecutor. The prosecutor shall not be required to respond to the motion unless ordered to do so by the Family Court pursuant to subsection (l) of this section.

(k) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or is not entitled to relief, the Family Court may dismiss or deny the motion.

(l) If the motion is not dismissed or denied after initial review, the Family Court shall order the prosecutor to file a response to the motion. The prosecutor shall file the response within 60 days of the issuance of the order except where the arrest was not presented to the prosecutor for a charging

decision, in which case the prosecutor shall file the response within 90 days of the issuance of the order.

(m) Upon the filing of the prosecutor's response, the Family Court shall determine whether a hearing is required.

(n) If the Family Court determines that a hearing is required, the hearing shall be scheduled promptly.

(o) At the hearing, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

(p) An order dismissing, granting, or denying the motion shall be in writing and include reasons.

(q) The Family Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant regarding the same offenses or arrests unless the previous motion was dismissed or denied without prejudice.

(r) An order dismissing, granting, or denying a motion for sealing is a final order for purposes of appeal.

(s) Records sealed pursuant to this section shall be opened only on order of the Family Court upon a showing of compelling need, except that, upon request, the movant shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under this section was granted. A request for access to sealed court records may be made ex parte.

(t) Any person, upon making inquiry of the Family Court concerning the existence of records of arrest, court proceedings, or adjudications involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available under subsection (h)(7) of this section with respect to any issue about that person's knowledge of the individual's record.

(Mar. 8, 2011, D.C. Law 18-284, § 3(h), 57 DCR 10477.)

**Legislative history of Law 18-284.** — For history of Law 18-284, see notes under § 16-2301.

## § 16-2336. Unlawful disclosure of records; penalties.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of sections 16-2331 through 16-2335, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(q), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-2336.

1973 Ed., § 16-2336.

**Legislative history of Law 2-22.** — For



legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 7-104.** — For

legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-

2316.

## § 16-2337. Additional powers of the Director of Social Services.

In addition to the powers and duties prescribed in section 11-1722, the Director of Social Services shall have power to take into custody and place in detention or shelter care, in accordance with this subchapter, children who are under his supervision as delinquent or in need of supervision, children on probation and under the Director's supervision, when the Director has reasonable cause to believe they have violated one or more conditions of their probation, or children who have run away from agencies or institutions to which they were committed under this subchapter.

(July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Apr. 20, 1999, D.C. Law 12-258, § 2(b), 46 DCR 1314; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(8), 48 DCR 2043.)

**Prior Codifications.** — 1981 Ed., § 16-2337.

1973 Ed., § 16-2337.

**Effect of amendments.** — D.C. Law 13-277 substituted "or" for "," following "delinquent".

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-258.** — For legislative history of D.C. Law 12-258, see Historical and Statutory Notes following § 16-2309.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

## § 16-2338. Emergency medical treatment.

Nothing in this subchapter shall prevent a public agency having custody of a child who is under jurisdiction of the Division from providing the child with emergency medical treatment.

(July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2338.

1973 Ed., § 16-2338.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## § 16-2339. Immunity for juveniles who are witnesses in juvenile proceedings.

(a) Whenever a child, other than a child transferred for criminal prosecution pursuant to section 16-2307, who is called as a witness refuses on the basis of the privilege against self-incrimination to testify or provide other information in or ancillary to a delinquency proceeding brought under this chapter in the Family Division, and the person presiding over the proceeding communicates to the witness an order issued under subsection (c) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination. However, no testimony or other information compelled

under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness except in a proceeding for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Corporation Counsel may request an order under subsection (c) of this section when the testimony or other information may be necessary to the public interest, and the child called as a witness has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

(c) When any child, other than a child transferred for criminal prosecution pursuant to section 16-2307, has been or may be called to testify or provide other information in or ancillary to a delinquency proceeding brought under this chapter in the Family Division, and the Corporation Counsel has made a request under subsection (b) of this section, the judge presiding over the proceeding shall issue an order requiring the child to give testimony or provide other information which was refused on the basis of the privilege against self-incrimination. An order issued pursuant to this subsection shall become effective as provided in subsection (a) of this section.

(May 21, 1994, D.C. Law 10-118, § 2, 41 DCR 1637.)

**Prior Codifications.** — 1981 Ed., § 16-2339.

**Legislative history of Law 10-118.** — Law 10-118, the "Immunity for Juveniles Who are Witness in Juvenile Proceedings Act of 1994," was introduced in Council and assigned Bill No. 10-271, which was referred to the Commit-

tee on the Judiciary. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-208 and transmitted to both Houses of Congress for its review. D.C. Law 10-118 became effective on May 21, 1994.

## § 16-2340. Rights of victims or eyewitnesses in delinquency proceedings.

(a) A victim or a eyewitness of a delinquent act should:

(1) Be treated with dignity, respect, courtesy, sensitivity, and with respect for the victim's or eyewitness' privacy;

(2) Be notified in advance of dates and times of juvenile factfinding hearings, transfer hearings, disposition hearings, and post-disposition hearings;

(3) During any phase of the investigative proceedings or court proceedings, be provided, to the extent practicable, a waiting area that is separate from the child alleged to be delinquent and the family and friends of the child alleged to be delinquent;

(4) Be informed by the appropriate juvenile justice agency of financial assistance, criminal injuries compensation, and any other social services available to the victim, and receive assistance or information on how to apply for such programs;

(5) Be advised of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by law enforcement agencies when means can be employed to otherwise satisfy



evidentiary requirements for prosecution, unless there is a compelling law enforcement reason for retaining the stolen property; and

(6) Be informed, in appropriate cases, by the Corporation Counsel of the right to request restitution.

(b) A victim and the victim's immediate family members have the right to submit a victim impact statement in all cases and have the victim impact statement considered in the disposition of the case. The Corporation Counsel and the Director of Social Services shall inform the victim and the victim's immediate family members or caretaker, or their duly authorized attorney, of such right.

(c) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the respondent, or respondent's family and witnesses for respondent, and the victim, eyewitnesses for the Corporation Counsel, and the family of the victim or the Corporation Counsel's eyewitnesses.

(d) Except as otherwise mandated by law, the District government shall not be required to disclose the names or addresses of its witnesses prior to a hearing.

(e) The respondent, the respondent's attorney or another person acting on behalf of the respondent shall clearly identify himself or herself as being, representing, or acting on behalf of the respondent at the beginning of any contact with the victim, the victim's family, or other persons believed to be eyewitnesses to the offenses charged.

(f) Nothing in this section shall be construed as creating a cause of action against the District of Columbia, any public official, employee, or public agency responsible for implementing or carrying out the provisions of this section.

(Mar. 17, 2005, D.C. Law 15-261, § 602(h), 52 DCR 1188.)

**Cross references.** — Interstate family support, determination of parentage, applicable law, see § 46-307.01.

**Legislative history of Law 15-261.** — For Law 15-261, see notes following § 16-2301.

## *Subchapter II. Parentage Proceedings.*

### **§ 16-2341. Representation.**

(a) Where a public support burden has been incurred or is threatened, or where an individual seeks assistance pursuant to part D in title IV of the Social Security Act approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. 651 et seq.), the Corporation Counsel or an assistant may bring a civil action in the Family Division to enforce support of any parent or child against an absent parent.

(b) In all cases over which the Division has jurisdiction under paragraphs (3), (4), (10), and (11) of section 11-1101, where the court deems it necessary and proper, an attorney shall be appointed by the court to represent the respondent.

(c) Nothing in this section shall be construed to interfere with the right of an

individual to file a civil action over which the Division has jurisdiction under the paragraphs of section 11-1101 referred to in subsection (b).

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(a), 23 DCR 2544; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(6), 33 DCR 6710; Mar. 24, 1998, D.C. Law 12-81, § 10(ff), 45 DCR 745.)

**Cross references.** — Family Court of the Superior Court, jurisdiction, see § 11-1101.

**Prior Codifications.** — 1981 Ed., § 16-2341.

1973 Ed., § 16-2341.

**Legislative history of Law 1-87.** — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-166.** — Law

6-166, the “District of Columbia Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.

Applicability of prior law.

Authority of Corporation Counsel.

Delay.

In general.

Pleadings.

Presumptions and burden of proof.

Review.

Stale or fraudulent claims.

### Admissibility of evidence.

In paternity proceeding, deceased mother's testimony which had previously been given by her at statutorily prescribed preliminary hearing was admissible at trial where, at the preliminary hearing, mother had testified under oath, accused was present in court and represented by counsel, accused cross-examined mother, and verbatim transcript of complete testimony was made, and subsequent trial concerned same subject matter of the preliminary hearing and involved the same parties. D.C. Code §§ 16-2341, 16-2345. *District of Columbia v. Faison*, 278 A.2d 688, 1971 D.C. App. LEXIS 344 (1971).

Proffered expert testimony as to results of tests which had excluded defendant as father of one of three children born out of wedlock to mother who at first charged defendant with being the father of the three children but later successfully sought support from him for only two of the children was admissible as affecting

her credibility though not as probative on paternity, and exclusion of the evidence was prejudicial to the defendant. D.C. Code 1961, § 16-2341 et seq. *Hawkins v. District of Columbia*, 203 A.2d 116, 1964 D.C. App. LEXIS 273 (App. 1964).

### Applicability of prior law.

Although nature of paternity proceedings was changed under Court Reform Act, intent of Congress was that suits in existence at time of effective date would not abate. Act July 29, 1970, 84 Stat. 473; D.C. Code §§ 11-921(a)(1), 11-1583, 16-2341; U.S. Const. art. 1, § 9, cl. 3. *Cupo v. District of Columbia*, 285 A.2d 696, 1972 D.C. App. LEXIS 317 (1972).

### Authority of Corporation Counsel.

Authority of corporation counsel to maintain paternity suit did not terminate with effective date of Court Reform Act, under which corporation counsel may not represent mother or child unless public support burden has been incurred or is threatened, in view of congressional purpose of maintaining continuity in regard to pending actions and vested right of child to have action maintained in name of district. Act July 29, 1970, 84 Stat. 473; D.C. Code §§ 11-921(a)(1), 11-1583, 16-2341; U.S. Const. art. 1, § 9, cl. 3. *Cupo v. District of Columbia*, 285 A.2d 696, 1972 D.C. App. LEXIS 317 (1972).

### Delay.

Record in juvenile court proceeding for determination of paternity and support of child dis-



closed no reason requiring reversal of judgment because of several years' delay in trial due to congested court calendar, where no application was made to advance case for hearing and at no time was appellant in custody. D.C. Code 1961, §§ 11-951 to 11-967; D.C. Code 1961, §§ 16-2341 to 16-2356. *Jackson v. District of Columbia*, 200 A.2d 199, 1964 D.C. App. LEXIS 227 (App. 1964).

#### **In general.**

Duty of a parent to support a child whether born in wedlock or out of wedlock arises automatically upon establishment of parentage by sufficient proof. D.C. Code 1981, § 16-916. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

Proceeding involving paternity determination was a civil action for support of child and procedure was neither criminal nor punitive in character. D.C. Code 1961, §§ 11-951 to 11-967; D.C. Code 1961, §§ 16-2341 to 16-2356. *Jackson v. District of Columbia*, 200 A.2d 199, 1964 D.C. App. LEXIS 227 (App. 1964).

#### **Pleadings.**

Mother seeking declaration of paternity failed to state a justiciable claim, as mother alleged no reason for seeking the determination of her adult daughter's parentage and, thus, mother's petition was properly dismissed. Domestic Relations Rules 57, 405(a, b); 18 U.S.C. § 2201 et seq. *In re D.M.*, 562 A.2d 618, 1989 D.C. App. LEXIS 131 (1989).

Although putative father premised his motion to dismiss upon failure to allege that a public support burden existed or was threatened and that corporation counsel could not bring action on behalf of natural mother, petition was not fatally defective; moreover, it could not be said that corporation counsel did not consider public support burden to be threatening, thereby making natural mother eligible for representation. D.C. Code 1981, § 16-2341(a).

*M.B. v. District of Columbia*, 478 A.2d 1087, 1984 D.C. App. LEXIS 492 (1984).

#### **Presumptions and burden of proof.**

Proof necessary in proceedings in juvenile court for determination of paternity and support of child is still by a preponderance of evidence, not beyond reasonable doubt. D.C. Code 1961, §§ 11-951 to 11-967; D.C. Code 1961, §§ 16-2341 to 16-2356. *Jackson v. District of Columbia*, 200 A.2d 199, 1964 D.C. App. LEXIS 227 (App. 1964).

#### **Review.**

Order in action for the adjudication of paternity and support was not final for purposes of an appeal, though paternity issue was resolved and temporary support determination had been made, where amount of support was not finally decided. D.C. Code 1981, § 11-721(a). *L.A.W. v. M.E.*, 606 A.2d 160, 1992 D.C. App. LEXIS 91 (1992).

Action seeking adjudication of paternity and support is not final for purposes of appeal until both paternity issue and support issue are finally resolved. D.C. Code 1981, § 11-721(a). *L.A.W. v. M.E.*, 606 A.2d 160, 1992 D.C. App. LEXIS 91 (1992).

Fact that jury chose to believe mother instead of putative father in trial to determine paternity and for support of child furnished no basis for reversal of judgment. D.C. Code 1961, §§ 11-951 to 11-967; D.C. Code 1961, §§ 16-2341 to 16-2356. *Jackson v. District of Columbia*, 200 A.2d 199, 1964 D.C. App. LEXIS 227 (App. 1964).

#### **Stale or fraudulent claims.**

The interest of the government in limiting stale or fraudulent claims, though legitimate, is entitled to relatively little weight in the context of paternity actions. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

## **§ 16-2342. Who may bring a complaint; time.**

(a) A proceeding to determine parentage may be brought by the District of Columbia, a person whose parentage of the child is to be adjudicated, a child's mother, putative father, guardian, legal or physical custodian, the IV-D agency, the person whose parentage is to be determined, if an adult, or a licensed child-placing agency.

(b) A proceeding to determine parentage and provide for the support of a child with no presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) may be instituted after four months of pregnancy or at anytime until the child's twenty-first birthday.

(c) Except as otherwise provided in subsection (d) of this section, a proceeding to rebut the presumption of parentage of a child having a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) shall be commenced not

later than 2 years after the birth of the child, after which time the presumption becomes conclusive.

(d) A proceeding seeking to disprove the parent-child relationship between a child and the child's presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) may be maintained at any time if the court determines that the presumed parent did not live with the child's mother during the 300 days before the birth of the child and never openly held out the child as his or her own.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(b), 23 DCR 2544; Sept. 26, 1984, D.C. Law 5-123, § 2, 31 DCR 4056; Apr. 3, 2001, D.C. Law 13-269, § 106(k), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(h), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-2342.

1973 Ed., § 16-2342.

**Effect of amendments.** — D.C. Law 13-269 rewrote the section heading which formerly read: "Time of bringing complaint.", redesignated former subsec. (a) as subsec. (b); added subsec. (a); and, in subsec. (b), inserted "This section shall apply, as of August 16, 1984, to the establishment of paternity of a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 21 years was then in effect in the jurisdiction in which the action was brought."

D.C. Law 18-33 rewrote the section.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For the temporary amendment of section, see § 5(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(m) of the Child Support and Welfare Re-

form Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(m) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(m) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(m) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(m) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(m) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).



For temporary (90 day) amendment of section, see § 106(k) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 5-123.** — For legislative history of D.C. Law 5-123, see Historical and Statutory Notes following § 16-2343.1 [1981 Ed.].

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

## CASE NOTES

### ANALYSIS

Authority of Corporation Counsel.

Death of parent.

Due process.

In general.

Insurance.

Jurisdiction, generally.

Jurisdictional time limits.

Limitations period, generally.

Right to trial.

Validity of prior law.

Visitation.

### Authority of Corporation Counsel.

Authority of corporation counsel to maintain paternity suit did not terminate with effective date of Court Reform Act, under which corporation counsel may not represent mother or child unless public support burden has been incurred or is threatened, in view of congressional purpose of maintaining continuity in regard to pending actions and vested right of child to have action maintained in name of district. Act July 29, 1970, 84 Stat. 473; D.C. Code §§ 11-921(a)(1), 11-1583, 16-2341; U.S. Const. art. 1, § 9, cl. 3. *Cupo v. District of Columbia*, 285 A.2d 696, 1972 D.C. App. LEXIS 317 (1972).

### Death of parent.

Following death of putative father, illegitimate child can prove that he or she is a child born out of wedlock and an heir by offering evidence of parenthood that was in existence prior to death of putative father. D.C. Code 1973, § 19-316. In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

Illegitimate child seeking to inherit from putative father must establish by a preponderance of the evidence that putative father was his father. D.C. Code 1981, § 16-909(a). In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

For a child born out of wedlock to inherit from putative father, facts and circumstances establishing parenthood must have come into existence prior to father's death; however, child is not required to bring paternity action prior to putative father's death. In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

### Due process.

Paternity proceeding brought in name of Dis-

trict of Columbia against putative father is governed by requirements of due process and is subject to principle of Jencks Act, and thus prior statements of government witnesses in possession of government must be turned over to defendant at trial. D.C. Code §§ 16-2342, 16-2345, 16-2346, 16-2350; 18 U.S.C. § 3500. *Saunders v. District of Columbia*, 263 A.2d 58, 1970 D.C. App. LEXIS 234 (App. 1970).

### In general.

Although there is an element of arbitrariness inherent in all statutes of limitations, a closer than normal means-end fit is necessary when a statute of limitations burdens an "almost suspect" class in such a way as to curtail its basic right to parental support. D.C. Code 1981, § 16-2342; U.S.C. Const. Amends. 5, 14. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

Paternity proceedings are neither entirely criminal nor civil in nature, but are quasi-criminal. D.C. Code §§ 16-2342, 16-2345, 16-2346, 16-2350. *Saunders v. District of Columbia*, 263 A.2d 58, 1970 D.C. App. LEXIS 234 (App. 1970).

### Insurance.

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who were illegitimate but who had been acknowledged by him, were entitled to take precedence over the claim of his mother. 5 U.S.C. § 8705(a); D.C. Code §§ 16-2341, 16-2342, 16-2347. *Green v. Green*, 365 A.2d 610, 1976 D.C. App. LEXIS 404 (1976).

### Jurisdiction, generally.

The superior court has jurisdiction to adjudicate a nonsupport paternity action under its general equity jurisdiction. D.C. Code 1981, §§ 11-921, 11-1101 et seq., 16-2342; *District of Columbia Court Reform and Criminal Procedure Act of 1970*, § 101 et seq., 84 Stat. 473. In re D.M., 562 A.2d 618, 1989 D.C. App. LEXIS 131 (1989).

### Jurisdictional time limits.

In case of parent suing to establish paternity in order to enforce a support obligation, filing

## § 16-2342.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

within three years after birth of child is jurisdictional prerequisite. D.C. Code §§ 11-1101, 16-2342. *Felder v. Allsopp*, 391 A.2d 243, 1978 D.C. App. LEXIS 557 (1978).

In proceeding on petitions to establish paternity and to provide support for children who were 12 and 10 years of age, mother's testimony that defendant had given her money over the years as she needed it, that, on one specific date within one year from date of filing petitions, defendant had given her \$10 for visit to clinic (apparently occasioned by her cardiac condition) and that defendant knew that she never asked for money for herself was insufficient to support jurisdictional finding that defendant had contributed to support of children within one year prior to filing of petitions. D.C. Code §§ 16-2342, 17-305, 17-305(a). *Lindsay v. District of Columbia*, 298 A.2d 211, 1972 D.C. App. LEXIS 302 (1972).

### Limitations period, generally.

Child's paternity action against purported father was barred by applicable statute of limitations that became effective after child's twenty-first birthday; child had no vested right in predecessor statute, and, in any event, predecessor statute was available to child for two and one-half months after twenty-first birthday when support payments stopped. D.C. Code 1981, § 16-2342. *R.N.M. v. A.N.*, 537 A.2d 579, 1988 D.C. App. LEXIS 42 (1988).

The period for obtaining support granted to illegitimate children must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

No limitations period is applicable to petitions under District of Columbia Uniform Reciprocal Enforcement of Support Act. D.C. Code 1973, §§ 16-2342; D.C. Code 1981, §§ 11-1101, 11-1101(3, 10, 11). *Harris v. Kinard*, 443 A.2d 25, 1982 D.C. App. LEXIS 306 (1982).

Delay of thirty-four days and forty days, respectively, between filing of complaint and issuance of summons was not unreasonable and therefore filing of complaints stopped running of one year statute of limitations applicable in cases where father ceases making contributions to support of child. D.C. Code §§ 16-2342 to 16-2345. *District of Columbia v. Howie*,

230 A.2d 715, 1967 D.C. App. LEXIS 170 (App. 1967).

### Right to trial.

Seventh Amendment right to jury trial was not available in paternity proceeding. D.C. Code 1981, §§ 16-2341 to 16-2348; U.S.C. Const. Amend. 7. *E.R.B. v. J.H.F.*, 496 A.2d 607, 1985 D.C. App. LEXIS 454 (1985).

Constitutional guaranty of right to speedy trial in all criminal prosecutions does not apply to paternity cases. D.C. Code § 16-2345. *District of Columbia v. Howie*, 230 A.2d 715, 1967 D.C. App. LEXIS 170 (App. 1967).

Defendants in paternity proceedings were not entitled to dismissal of proceedings because of delay due to court's congested docket where records did not disclose that either defendant objected to continuance or made demand for speedy preliminary hearing. D.C. Code § 16-2345. *District of Columbia v. Howie*, 230 A.2d 715, 1967 D.C. App. LEXIS 170 (App. 1967).

### Validity of prior law.

Statute imposing a two-year period of limitations on actions to establish paternity and provide support for children born out of wedlock is not substantially related to interest of government in preventing prosecution of stale or fraudulent paternity claims and is unconstitutional as denying equal protection to children who are born out of wedlock, in whose behalf suit is not brought within two years of their birth, and whose actions are not within either of the provisions for extending the period of limitations. D.C. Code 1981, § 16-2342; U.S. Const. Amends. 5, 14. *District of Columbia ex rel. W.J.D. v. E.M.*, 467 A.2d 457, 1983 D.C. App. LEXIS 492 (1983).

### Visitation.

Mother seeking visitation rights in case of child born out of wedlock and left in the care of the putative father would be free to bring an action without bar from statute providing jurisdictional time limitations for proceedings to establish parentage and provide for support of child born out of wedlock. D.C. Code § 16-2342. *Felder v. Allsopp*, 391 A.2d 243, 1978 D.C. App. LEXIS 557 (1978).

Where natural father of child sued to establish right to visitation, in essence an equitable domestic relations action, two-year time limitation applicable to paternity actions would not be applicable. D.C. Code §§ 11-1101, 16-2342. *Felder v. Allsopp*, 391 A.2d 243, 1978 D.C. App. LEXIS 557 (1978).

## § 16-2342.01. Voluntary acknowledgement of paternity.

(a) The voluntary acknowledgment of paternity pursuant to section 16-909.01(a)(1) shall:

(1) Create a conclusive presumption of paternity, consistent with § 16-909.01(b), which shall be admissible as evidence of paternity; and



(2) Be recognized as a basis for seeking a child support obligation without requiring any further proceeding to establish paternity.

(b) Judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity pursuant to section 16-909.1(a)(1).

(c) The IV-D agency is authorized to obtain voluntary acknowledgments of paternity in a manner that complies with the same requirements that apply to birthing hospitals as set forth in section 16-909.03.

(d) An acknowledgment shall be admissible in any judicial proceeding to determine parentage.

(Mar. 16, 1995, D.C. Law 10-223, § 2(h), 41 DCR 8051; Apr. 3, 2001, D.C. Law 13-269, § 106(l), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(i), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-2342.1.

**Effect of amendments.** — D.C. Law 13-269 designated the initial paragraph as subsec. (a) and added subsecs. (b), (c), and (d).

D.C. Law 18-33, in subsec. (a)(1), substituted “paternity, consistent with § 16-909.01(b),” for “paternity.”

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(o) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(o) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), § 5(o) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 15 of D.C. Act 12-503 provided for the application of the act.

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(n) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(n) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(n) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(n) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(l) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 10-223.** — Law 10-223, the “Paternity Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-777, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-360 and transmitted to both Houses of Congress for its review. D.C. Law 10-223 became effective on March 16, 1995.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor’s notes.** — Mayor authorized to issue rules: Section 3 of D.C. Law 10-223 provided

that, pursuant to Chapter 15 of Title 1 Chapter 5 of Title 2, 2001 Ed., the Mayor may issue rules to implement the provisions of the act.

Section 28(c)(6) of D.C. Law 15-354 provided

that the section designation of § 16-2342.1 of the District of Columbia Official Code is redesignated as § 16-2342.01.

## § 16-2343. Tests to establish parentage.

(a) When the Division has jurisdiction of actions or proceedings under section 11-1101, the court, on its own motion, may require, or, on the motion of a party, shall require, the child and all other parties to submit to medical or genetic tests, unless:

(1) A party has established or is awaiting determination of a claim of good cause for failure to cooperate with paternity establishment pursuant to section 4-217.09;

(2) A legal finding of paternity has been made by a court or administrative entity of competent jurisdiction and has not been overturned on appeal, unless a party has made a showing pursuant to Superior Court Domestic Relations Rule 60(b) or section 16-909(c-1) (or the applicable rule of another jurisdiction, if the finding was made in another state) that supports setting aside the judgment, and genetic or medical testing would aid in resolving whether the judgment should be set aside;

(3) The parties have signed a voluntary acknowledgment of paternity pursuant to section 16-909.01(a) or the law and procedures of another state, after December 23, 1997, and have not made a legally-effective rescission of the acknowledgment;

(4) The child was conceived through artificial insemination and the donor is not a parent pursuant to § 16-909(e)(2); or

(5) The child has a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2) and no proceeding to rebut the presumption was filed within the time provided in § 16-2342(c) or (d).

(a-1)(1) When a child does not have a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2), the IV-D agency shall require the child and all other parties to submit to medical or genetic tests, subject to exemptions for good cause pursuant to section 4-217.09, if:

(A) A party submits a sworn statement alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(B) A party contests an original test result and seeks additional testing, upon request and advance payment by the contestant.

(2) In all other cases in which a child does not have a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2), the IV-D agency may require the child and all other parties to submit to medical or genetic tests when paternity is contested, subject to exemptions for good cause pursuant to section 4-217.09.

(b)(1) Tests shall be performed by persons qualified as examiners of genetic markers present in the human body.

(2) The examiners may be appointed by the court, the IV-D agency, or chosen by consent of the parties.



(c)(1) Except as provided pursuant to subsection (a-1)(1)(B) of this section, the costs of any medical or genetic tests ordered by the IV-D agency shall be paid by the IV-D agency, subject to recoupment from the putative father if paternity is established. The costs of any medical or genetic tests not ordered by the IV-D agency, and the costs of any expert witness appointed by the court shall be paid by the parties.

(2) Where the District of Columbia is a party, the court may order that the District of Columbia pay the costs upon a finding that the alleged parent does not have sufficient resources to pay the costs.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(c), 23 DCR 2544; Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056; Apr. 30, 1988, D.C. Law 7-104, § 4(r), 35 DCR 147; May 15, 1990, D.C. Law 8-126, § 2(a), 37 DCR 2091; Apr. 3, 2001, D.C. Law 13-269, § 106(m), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(j), 56 DCR 4269.)

**Cross references.** — Child support enforcement, see § 46-201 et seq.

Family Court of the Superior Court, jurisdiction, see § 11-1101.

**Prior Codifications.** — 1981 Ed., § 16-2343.

1973 Ed., § 16-2343.

**Effect of amendments.** — D.C. Law 13-269 rewrote subsec. (a) which formerly read: “(a)(1) When the Division has jurisdiction of actions or proceedings under section 11-1101, the court, on its own motion, may require, or on the motion of a party, shall require the child, the mother, an alleged parent, or the other parent to submit to medical, genetic blood or tissue grouping tests. (2) The tests may include the leukocyte antigen test.”; added subsec. (a-1); in subsec. (b)(2) inserted “or the IV-D agency,” following “court,” and rewrote subsec. (c)(1) which formerly read: “(c)(1) The costs for the tests and expert witness appointed by the court shall be paid by the parties.”

D.C. Law 18-33, in subsec. (a), deleted “or” at the end of par. (3), rewrote par. (4), and added par. (5); and, in subsec. (a-1), substituted “When a child does not have a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2), the IV-D agency” for “The IV-D agency” in par. (1), and substituted “In all other cases in which a child does not have a presumed parent under § 16-909(a)(1) through (4) or § 16-909(a-1)(2)” for “In all other cases”.

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(in) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(n) of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(n) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 5(n) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 5(n) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(n) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(n) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(o) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(o) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(m) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 5-123.** — For legislative history of D.C. Law 5-123, see Historical and Statutory Notes following § 16-2343.01.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see His-

torical and Statutory Notes following § 16-2316.

**Legislative history of Law 8-72.** — Law 8-72, the "Genetic Tests for the Establishment of Paternity Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-429. The Bill was adopted on first and second readings on October 24, 1989, and November 7, 1989, respectively. Signed by the Mayor on November 13, 1989, it was assigned Act No. 8-111 and transmitted to both Houses of Congress for its review. D.C. Law 8-72 became effective on March 8, 1990.

**Legislative history of Law 8-126.** — Law 8-126, the "Genetic Tests for the Establishment of Paternity Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-336, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-179 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor's notes.** — Section 4(r) of D.C. Law 7-104 purported to substitute "Department of Human Services" for "Department of Public Health" apparently without regard to the amendment to this section by D.C. Law 5-123.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.  
Child support proceedings.  
Divorce proceedings.  
In general.  
Notice.  
Period of limitations.  
Purpose.  
Right to privacy.  
Validity.

### Admissibility of evidence.

The process of DNA analysis is not only generally admissible, but when properly performed and analyzed, it also appears to be universally admissible, by both federal and state courts alike applying either the Frye (general acceptance) standard or the relevancy (reasonable reliance) approach. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Deoxyribonucleic Acid (DNA) paternity analysis is presumptively reliable, and thus, admissible in a proceeding for the establishment of paternity, unless a party opposing its admission

into evidence makes a substantiated objection. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

### Child support proceedings.

The trial court did not abuse its discretion, in child support proceeding where paternity was at issue, by refusing to grant putative father's request for Human Leukocyte Antigen test on child; putative father had treated child as his own for six years, had made proffer of nonpaternity that amounted to no more than "mere suspicion," had been married to mother at time of birth, and had admitted sexual contact during period of conception. D.C. Code 1981, §§ 16-909(a)(1), 16-2343(a). S.A. v. M.A., 531 A.2d 1246, 1987 D.C. App. LEXIS 458 (1987).

### Divorce proceedings.

In divorce proceeding at which child's paternity was not at issue, evidence of wife's failure to take a human leukocyte antigen blood test to determine paternity was irrelevant. Rachal v. Rachal, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Proof of nonpaternity may, in appropriate cases, be circumstantial evidence of adultery as



grounds for divorce. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Husband, who never requested that trial court in divorce proceeding impose sanctions on wife for her failure to take human leukocyte antigen blood test to determine paternity of child, despite trial court's invitation to do so, waived such point. *Rachal v. Rachal*, 489 A.2d 476, 1985 D.C. App. LEXIS 350 (1985).

Superior court had jurisdiction in action for absolute divorce on grounds of adultery to order mother, who was before court, to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery even though child was not party, not resident, not represented by guardian ad litem, and there was no request to court for support, maintenance, or custody. D.C. Code §§ 16-909, 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Statute, providing that when it is relevant to action for divorce, court may direct that mother, child, and father submit to blood tests, gave superior court discretionary authority to order mother to submit her child to blood-grouping tests for sole purpose of deciding issue of adultery. D.C. Code § 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Where trial court made findings as to relevance of evidence that might be adduced from blood tests as going to issue of adultery in divorce action, there was no abuse of discretion in order that mother submit her child to blood-grouping tests. D.C. Code § 16-2343. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

#### **In general.**

Statutes which limit the use of blood test results to cases in which paternity can be excluded were enacted in order to prevent the improper and prejudicial use of a finding of nonexclusion based on blood-grouping tests. D.C. Code 1981, § 16-2343. *Cutchen v. Payne*, 466 A.2d 1240, 1983 D.C. App. LEXIS 487 (1983).

#### **Notice.**

When complaint is filed in paternity proceeding, notice to accused, by way of summons, must be given without unreasonable delay. D.C. Code 1961, §§ 16-2343 to 16-2345. *Perry v. District of Columbia*, 212 A.2d 339, 1965 D.C. App. LEXIS 215 (App. 1965).

#### **Period of limitations.**

Child's paternity action against purported father was barred by applicable statute of limitations that became effective after child's twenty-first birthday; child had no vested right in predecessor statute, and, in any event, predecessor statute was available to child for two and one-half months after twenty-first birthday

when support payments stopped. D.C. Code 1981, § 16-2342. *R.N.M. v. A.N.*, 537 A.2d 579, 1988 D.C. App. LEXIS 42 (1988).

Filing of complaint is not sufficient to stop running of time limitation in statute regarding proceedings to establish paternity unless such filing is followed by issuance of summons without reasonable delay. D.C. Code § 16-2343. *District of Columbia v. Howie*, 230 A.2d 715, 1967 D.C. App. LEXIS 170 (App. 1967).

Filing of complaint in paternity case is not sufficient to stop running of statutory time limitation unless such filing is followed by issuance of summons without unreasonable delay. D.C. Code 1961, §§ 16-2343 to 16-2345. *Perry v. District of Columbia*, 212 A.2d 339, 1965 D.C. App. LEXIS 215 (App. 1965).

Year's delay in issuing summons in paternity case was not reasonable and therefore filing of complaint did not stop running of two-year statute of limitations, and summons served when child was 28 months old was not timely and action was barred. D.C. Code 1961, §§ 16-2343 to 16-2345. *Perry v. District of Columbia*, 212 A.2d 339, 1965 D.C. App. LEXIS 215 (App. 1965).

#### **Purpose.**

The D.C. Council's purpose, when amending this section and § 16-2343.1 in 1984 and 1989, was to expedite the resolution of paternity cases by making HLA testing mandatory upon motion of a party or the court, and to provide for the general admissibility of results generated therefrom. *District of Columbia ex rel. J.A.B. v. W.R.*, 119 WLR 2261 (Super. Ct. 1991).

#### **Right to privacy.**

Ordering of blood-grouping tests of child to be performed by reputable medical laboratory following accepted medical procedures in divorce proceeding to prove adultery of child's mother did not violate child's constitutional right to privacy. D.C. Code § 16-2343; D.C. Code SCR, Dom.Rel.Rule 35. *Beckwith v. Beckwith*, 355 A.2d 537, 1976 D.C. App. LEXIS 513 (1976).

Subsection (a)(1), as amended, completely eliminates the court's responsibility to consider a party's privacy argument; thus, in cases where the motion is founded on nothing more than mere suspicion, the court is powerless to prevent the testing. The subsection, as amended, also requires the court to ignore whether Human Leukocyte Antigen (HLA) testing serves the child's best interest. *Fennell v. Fennell*, 122 WLR 20 (Super. Ct. 1993).

#### **Validity.**

This section is not unconstitutional as violative of the constitutional right to privacy and protection against unreasonable searches and seizures in requiring submission to human leukocyte antigen testing. *District of Columbia ex*

**§ 16-2343.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS**

rel. M.L.D. v. W.H., 113 WLR 2185 (Super. Ct. 1985).

**§ 16-2343.01. Admissibility of tests.**

(a)(1) Expert reports that show the statistical probability of the alleged parent's paternity may be admissible into evidence.

(2) Certified documentation of the chain of custody of the test specimens is competent evidence to establish the chain of custody.

(3) Test results that show the statistical probability of the alleged parent's paternity shall be admitted into evidence unless a substantiated objection is made that the test did not comply with the requirements of this subchapter.

(b)(1) If the test results or the expert's analysis of the test results are disputed, a party must file its specific objections in writing with the court within 45 days of the date the results were mailed by the court to the party.

(2) The court shall not accept objections made less than 5 days prior to the date of trial.

(c) Unless a party timely objects pursuant to subsection (b) of this section, the following apply:

(1) The parties waive their objections to the testing procedures, the admission into evidence of the results of the test and the report on the statistical probability of paternity.

(2) The verified results of the tests and the report are admissible into evidence at a hearing or other proceeding without need for foundation testimony or other proof of authenticity or accuracy regardless of the presence or non-presence of parties having notice of the action.

(3) Whenever the results of the tests and report exclude the alleged parent as the parent of the child, that evidence shall be conclusive evidence of nonpaternity, unless contrary test results are received.

(d)(1) If the results of the tests and report of the evidence relating to the alleged parent's paternity of the child are disputed, the court, absent an agreement between the parties, shall resolve all disputes.

(2) The court may order that additional tests be made at the expense of the objecting party.

(e)(1) When a child has no presumed parent under § 16-909(a)(1) through (4) or under § 16-909(a-1)(2) and a genetic test result indicates a 99% probability that the putative father is the father of the child, if the genetic test is of the type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services and is performed by a laboratory approved by such body, there is a conclusive presumption of paternity and the Court shall enter a judgment finding the parentage of the child consistent with such result, upon the submission of the result and a certifying affidavit from the laboratory, subject to the determination of any objection properly filed pursuant to subsection (b) of this section.

(2) When a child has a presumed parent under § 16-909(a)(1) through (4) or under § 16-909(a-1)(2) and a genetic test result indicates a 99% probability that the putative father is the father of the child, if the genetic test is of the



type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services and is performed by a laboratory approved by such body, the Court shall determine parentage giving due consideration to the child's interests and the duration and stability of the relationship between the child, the presumed parent, and the putative parent.

(f) Bills for pregnancy, childbirth, and genetic testing are admissible as evidence without third-party foundation testimony and shall constitute prima facie evidence of the amounts incurred for such services or for testing on behalf of the child.

(Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056; Mar. 8, 1990, D.C. Law 8-72, § 2(b), 36 DCR 8008; May 15, 1990, D.C. Law 8-126, § 2(b), 37 DCR 2091; Mar. 16, 1995, D.C. Law 10-223, § 2(i), 41 DCR 8051; Apr. 3, 2001, D.C. Law 13-269, § 106(n), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(k), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-2343.1.

**Effect of amendments.** — D.C. Law 13-269 rewrote subsec. (e) which formerly read:

"(e) A conclusive presumption of paternity shall be created upon a genetic test result and an affidavit from a laboratory, certified by the American Association of Blood Banks, that indicates a 99% probability that the putative father is the father of the child and the Division shall enter a judgment finding the parentage of the child."; and added subsec. (f).

D.C. Law 18-33 rewrote subsec. (e), which had read as follows: "(e) A genetic test result that indicates a 99% probability that the putative father is the father of the child shall create a conclusive presumption of paternity if the genetic test is of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services and is performed by a laboratory approved by such a body. The Court shall enter a judgment finding the parentage of the child consistent with such result, upon the submission of the result and a certifying affidavit from the laboratory, subject to the determination of any objection properly filed pursuant to subsection (b) of this section."

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

**Emergency legislation.** — For temporary amendment of section, see § 5(p) of the Child

Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(p) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), § 5(p) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(p) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(p) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(n) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 5-123.** — Law 5-123, the “Percentage and Support Proceedings Reform Act of 1984,” was introduced in Council and assigned Bill No. 5-366, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 12, 1984, and June 26, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-175 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-72.** — For legislative history of D.C. Law 8-72, see Historical and Statutory Notes following § 16-2343.

**Legislative history of Law 8-126.** — For legislative history of D.C. Law 8-126, see Historical and Statutory Notes following § 16-2343.

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see His-

torical and Statutory Notes following § 16-2342.01.

**Legislative history of Law 12-210.** — For legislative history of D.C. Law 12-210, see Historical and Statutory Notes following § 16-2342.

**Legislative history of Law 13-207.** — For D.C. Law 13-207, see notes following § 16-901.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor’s notes.** — Mayor authorized to issue rules: See note to § 16-2342.01.

Section 28(c)(7) of D.C. Law 15-354 provided that the section designation of § 16-2343.1 of the District of Columbia Official Code is redesignated as § 16-2343.01.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.

In general.

Objections.

Paternity by estoppel.

Period of limitations.

Sanctions.

### Admissibility of evidence.

Because District of Columbia possessed documentation of chain of custody of report of paternity test results, in form of report itself, results could not be excluded on ground of absence of chain of custody. D.C. Code 1981, § 16-2343.1(a)(2). District of Columbia ex rel. W.J.D. v. E. McB., 557 A.2d 941, 1989 D.C. App. LEXIS 67 (1989).

In light of timing irregularities, as result of which District of Columbia had neither seen paternity test report nor been informed of test results until after continued trial had begun, and lack of written objection from putative father, District’s failure to have expert witnesses available was not proper basis for excluding test results, notwithstanding court’s prior admonition to “have your witnesses available.” District of Columbia ex rel. W.J.D. v. E. McB., 557 A.2d 941, 1989 D.C. App. LEXIS 67 (1989).

In paternity proceeding, proper foundation for admission of results of human leukocyte antigen tests was laid where laboratory director who performed the analysis with laboratory technician’s assistance testified that his laboratory was fully accredited and qualified to perform and evaluate the tests, gave technical explanation of how test is done for paternity purposes, and testified without contradiction as to identification devices he used to safeguard accuracy of test results. L.C.D. v. District of

Columbia, 488 A.2d 918, 1985 D.C. App. LEXIS 327 (1985).

Fact that blood samples used in human leukocyte antigen tests to determine paternity were processed by laboratory technician who did not testify at trial did not bar test results from being admitted where laboratory director who supervised technician and who performed important stages in lengthy laboratory tests either independently or simultaneously with technician testified. L.C.D. v. District of Columbia, 488 A.2d 918, 1985 D.C. App. LEXIS 327 (1985).

Certified result of deoxyribonucleic acid (DNA) test, conducted after alleged father’s death, was admissible to determine paternity, for purposes of inheritance. In re Estate of Douglas Allen Johnson, 134 WLR 1703 (Super. Ct. 2006).

The D.C. Council’s purpose, when amending D.C. Code § 16-2343 and this section in 1984 and 1989, was to expedite the resolution of paternity cases by making HLA testing mandatory upon motion of a party or the court, and to provide for the general admissibility of results generated therefrom. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

The process of DNA analysis is not only generally admissible, but when properly performed and analyzed, it also appears to be universally admissible, by both federal and state courts alike applying either the Frye (general acceptance) standard or the relevancy (reasonable reliance) approach. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

Deoxyribonucleic Acid (DNA) paternity analysis is presumptively reliable, and thus, admissible in a proceeding for the establishment of



paternity, unless a party opposing its admission into evidence makes a substantiated objection. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

The HLA tests and the DNA analyses were properly performed in accordance with statutory prerequisites and established standards that enjoy general acceptance in the scientific community and the results thereof, including statistical probabilities of paternity, were therefore admissible into evidence as a matter of law. District of Columbia ex rel. J.A.B. v. W.R., 119 WLR 2261 (Super. Ct. 1991).

#### **In general.**

Statutes which limit the use of blood test results to cases in which paternity can be excluded were enacted in order to prevent the improper and prejudicial use of a finding of nonexclusion based on blood-grouping tests. D.C. Code 1981, § 16-2343. Cutchember v. Payne, 466 A.2d 1240, 1983 D.C. App. LEXIS 487 (1983).

#### **Objections.**

Putative father waived opportunity to contest results of Human Leukocyte Antigen test by failing to file written objections to test results. D.C. Code 1981, § 16-2343.1(b)(1), (c)(1). W.M. v. D.S.C., 591 A.2d 837, 1991 D.C. App. LEXIS 114 (1991).

#### **Paternity by estoppel.**

Superior court's failure to evoke doctrine of paternity by estoppel on its own initiative in child neglect proceedings based on mother's alleged misrepresentations to companion that he was her child's father did not constitute miscarriage of justice, where putative father, who was not accused of misrepresenting anything, was adjudicated child's father and where it was not in child's interest to have two different men sharing that legal status. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

Court of Appeals has not taken expansive view of doctrine of paternity by estoppel, even where that doctrine has been invoked for plainly beneficent purpose of attempting to secure support for child. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

It was not plainly wrong for superior court to fail to evoke doctrine of paternity by estoppel on its own initiative in child neglect proceedings,

where no party ever asked court to invoke doctrine. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

#### **Period of limitations.**

Child's paternity action against purported father was barred by applicable statute of limitations that became effective after child's twenty-first birthday; child had no vested right in predecessor statute, and, in any event, predecessor statute was available to child for two and one-half months after twenty-first birthday when support payments stopped. D.C. Code 1981, § 16-2342. R.N.M. v. A.N., 537 A.2d 579, 1988 D.C. App. LEXIS 42 (1988).

#### **Sanctions.**

Under statute which authorizes range of sanctions if putative father refuses to submit to human leukocyte antigen test to determine possibility of paternity, trial court is empowered to enter default as to paternity of putative father who unreasonably refuses to take test. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

In order to promote litigation of paternity suits on the merits, trial court should compel putative father to take human leukocyte antigen test by using, if necessary, contempt power before resorting to permissible ultimate sanction of default determination of paternity if putative father continues to refuse to take test. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

Upon putative father's failure to take human leukocyte antigen test pursuant to court order, whether sanction ordering that putative father's answer denying paternity be stricken and that ex parte hearing be held was intended to treat allegation of paternity as admitted or was intended to punish putative father only to extent of submitting case to ex parte determination of paternity rather than full adversarial trial could not be determined on record and remand was required. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

## **§ 16-2343.02. Sanctions.**

If any party refuses to submit to a test the party may be punished by contempt or by other sanctions that the court considers appropriate.

(Sept. 26, 1984, D.C. Law 5-123, § 3, 31 DCR 4056.)

## § 16-2343.03 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Prior Codifications.** — 1981 Ed., § 16-2343.2.

**Legislative history of Law 5-123.** — For legislative history of D.C. Law 5-123, see Historical and Statutory Notes following § 16-2343.01.

**Editor's notes.** — Section 28(c)(7) of D.C. Law 15-354 provided that the section designation of § 16-2343.2 of the District of Columbia Official Code is redesignated as § 16-2343.02.

### CASE NOTES

#### ANALYSIS

Contempt.  
Judgment by default.  
Review.

#### Contempt.

In order to promote litigation of paternity suits on the merits, trial court should compel putative father to take human leukocyte antigen test by using, if necessary, contempt power before resorting to permissible ultimate sanction of default determination of paternity if putative father continues to refuse to take test. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

#### Judgment by default.

Under statute which authorizes range of sanctions if putative father refuses to submit to human leukocyte antigen test to determine

possibility of paternity, trial court is empowered to enter default as to paternity of putative father who unreasonably refuses to take test. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

#### Review.

Upon putative father's failure to take human leukocyte antigen test pursuant to court order, whether sanction ordering that putative father's answer denying paternity be stricken and that ex parte hearing be held was intended to treat allegation of paternity as admitted or was intended to punish putative father only to extent of submitting case to ex parte determination of paternity rather than full adversarial trial could not be determined on record and remand was required. D.C. Code 1981, § 16-2343.2; Domestic Relations Rule 405(e). District of Columbia v. J.R.M., 521 A.2d 1152, 1987 D.C. App. LEXIS 300 (1987).

## § 16-2343.03. Default order.

If a respondent fails to appear at a hearing in any case in which parentage is at issue, a default order shall be entered upon a showing that (1) the respondent was served with notice of the action by any method permitted pursuant to section 46-206(b), and (2) that the respondent received actual notice of the first, or any other hearing, where parentage is at issue which the respondent failed to attend. An ex parte hearing shall not be required before the entry of a default order.

(Mar. 16, 1995, D.C. Law 10-223, § 2(j), 41 DCR 8051; July 25, 1995, D.C. Law 11-30, § 14, 42 DCR 1547; Apr. 18, 1996, D.C. Law 11-110, § 66, 43 DCR 530; Apr. 3, 2001, D.C. Law 13-269, § 106(o), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(l), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-2343.3.

**Effect of amendments.** — D.C. Law 13-269 rewrote the section which formerly read:

"In the event the defendant fails to appear, a default order shall be entered in a paternity case upon a showing of service of process on the defendant."

D.C. Law 18-33 substituted "respondent" for "putative father", "parentage" for "paternity", and "the respondent" for "he".

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).



For temporary (225 day) amendment of section, see § 105(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 5(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 105(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

**Emergency legislation.** — For temporary amendment of section, see § 5(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), and § 5(o) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923).

For temporary amendment of section, see § 5(q) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(q) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), § 5(q) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 15 of D.C. Act 12-503 provided for the application of the act.

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 105(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606). For temporary (90-day) addition of § 16-2343.4 1981 Ed., see § 105(r) of the same Act.

For temporary (90-day) amendment of section; see § 105(q) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678). For temporary (90-day) addition of § 16-2343.4 1981 Ed., see § 105(r) of the same Act.

For temporary (90-day) amendment of section, see § 105(q) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581). For temporary (90-day) addition of § 16-2343.4 1981 Ed., see § 105(r) of the same Act.

For temporary (90 day) amendment of section, see § 105(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(o) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 10-223.** — For legislative history of D.C. Law 10-223, see Historical and Statutory Notes following § 16-2342.01.

**Legislative history of Law 11-30.** — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995 and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

**Legislative history of Law 11-110.** — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor's notes.** — Mayor authorized to issue rules: See note to § 16-2342.01.

Section 28(c)(7) of D.C. Law 15-354 provided that the section designation of § 16-2343.3 of the District of Columbia Official Code is redesignated as § 16-2343.03.

CASE NOTES

**Support actions.**

Where defendant putative father failed to plead or otherwise defend, although properly served with process, in action by mother for support and maintenance of minor child, mother, upon filing of affidavit in support, was

entitled to entry of default, and ex parte proof of defendant's paternity was not required. D.C. Code General Sessions Court Rules, § 1, rule 8(d); § 4, rules 1, 6(c); D.C. Code § 16-2349. *Taylor v. Johnson*, 262 A.2d 803, 1970 D.C. App. LEXIS 227 (App. 1970).

**§ 16-2343.04. No right to jury trial.**

The parties to an action to establish parentage are not entitled to a jury trial. (Apr. 3, 2001, D.C. Law 13-269, § 106(p), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(m), 56 DCR 4269.)

**Effect of amendments.** — D.C. Law 18-33 substituted "parentage" for "paternity".

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 5(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 105(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 105(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary addition of § 16-2343.4 1981 Ed., see § 5(r) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(r) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(r) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary addition of § 16-2343.4 1981 Ed., see § 105(r) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90 day) addition of section, see § 105(r) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, October 24, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 106(p) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**§ 16-2344. Exclusion of public.**

Upon trial or proceedings over which the Division has jurisdiction under paragraph (3), (4), (10), or (11) of section 11-1101, the court may exclude the general public and, at the request of either party, shall exclude the general public.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a).)



**Prior Codifications.** — 1981 Ed., § 16-2344. 1973 Ed., § 16-2344.

### CASE NOTES

#### ANALYSIS

Due process.  
Findings.  
In general.  
Review.

#### Due process.

Civil as well as criminal contemnor has qualified due process right not to be incarcerated in secret proceeding. U.S.C. Const. Amend. 5. *Morgan v. Foretich*, 521 A.2d 248, 1987 D.C. App. LEXIS 290 (1987).

There is no presumption of either openness or closure of civil contempt proceeding in child custody case and trial court must balance qualified due process right of contemnor to open civil contempt proceeding against best interests and possible privacy rights of child and the reputational or other interests of those opposing an open hearing. *Morgan v. Foretich*, 521 A.2d 248, 1987 D.C. App. LEXIS 290 (1987).

#### Findings.

Conclusion that closure of civil contempt proceeding in child custody case is warranted

should not remain only implicit in record and explicit finding should be made; declining to follow *In re Iowa Freedom of Information Council*, 724 F.2d 658 (8th Cir.) *Morgan v. Foretich*, 521 A.2d 248, 1987 D.C. App. LEXIS 290 (1987).

#### In general.

Presumption of openness and standard for closure that apply in criminal cases do not apply to evidentiary phase of civil contempt hearing in child custody and visitation rights case. *Morgan v. Foretich*, 521 A.2d 248, 1987 D.C. App. LEXIS 290 (1987).

#### Review.

Notwithstanding failure to appeal from written order which allegedly confirmed prior closure of civil contempt proceeding, issue was properly presented on appeal where notices of appeal were taken from the order of contempt and the subsequent written findings and conclusions. *Morgan v. Foretich*, 521 A.2d 248, 1987 D.C. App. LEXIS 290 (1987).

## § 16-2345. New birth record upon marriage or determination of parents.

(a) When a certified copy of a marriage certificate is submitted to the Registrar, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child, and the parentage of the child has been judicially determined or acknowledged by each of the parents, or when the parenthood of a child born out of wedlock has been established by judicial process or by acknowledgement by the person whose parenthood is thus determined, or when an agreement and affidavit that meet the requirements of section 16-909.01(a)(2) are submitted to the Registrar, or when a consent to parent a child born by artificial insemination pursuant to § 16-909(e)(1)(A) and § 7-205(e)(3A), is submitted to the Registrar, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The new birth certificate shall nowhere on its face show that the parentage has been established by judicial process or by acknowledgement. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal and opened for inspection only upon order of the Family Division.

(b) Voluntary acknowledgments and adjudications of paternity by administrative processes that meet federal requirements and are obtained in accordance with sections 16-909.03 through 16-909.05 and 16-2342.01(c), shall be filed with the Registrar of Vital Records.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 544, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(d), 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 112, 23 DCR 8737; Oct. 8, 1981, D.C. Law 4-34, § 29(g), 28 DCR 3271; Aug. 17, 1991, D.C. Law 9-39, § 2(e), 38 DCR 4970; Apr. 9, 1997, D.C. Law 11-255, § 18(i), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 10(gg), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(b)(1), 46 DCR 2118; Apr. 3, 2001, D.C. Law 13-269, § 106(q), 48 DCR 1270; July 18, 2009, D.C. Law 18-33, § 3(n), 56 DCR 4269.)

**Cross references.** — New birth certificates, written acknowledgment of parentage, see § 7-210.

**Prior Codifications.** — 1981 Ed., § 16-2345.

1973 Ed., § 16-2345.

**Effect of amendments.** — D.C. Law 13-269 designated existing text as subsec. (a) and added subsec. (b).

D.C. Law 18-33, in the section heading, deleted “natural” preceding “parents”; and, in subsec. (a), substituted “the requirements of section 16-909.01(a)(2) are submitted to the Registrar, or when a consent to parent a child born by artificial insemination pursuant to § 16-909(e)(1)(A) and § 7-205(e)(3A), is submitted to the Registrar,” for “the requirements of section 16-909.01(a)(2) are submitted to the Registrar.”

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(v) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(v) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(v) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of

1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(s) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 105(s) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 105(s) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 105(s) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(q) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 1-107.** — Law 1-107, the “Marriage and Divorce Act,” was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976, and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-34.** — Law 4-34, the “Vital Records Act of 1981,” was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and



transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-5.** — Law 9-5, the “District of Columbia Paternity Establishment Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-39.** — Law 9-39, the “District of Columbia Paternity Establishment Act of 1991,” was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-255.** — For

legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-2309.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-264.** — Law 12-264, the “Technical Amendments Acts of 1998,” was introduced in Council and assigned Bill No. 12-804. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

#### CASE NOTES

##### **In general.**

Considering factors relating to the best interest of the child, the court granted a natural father’s request to change the surname of his

child, born out of wedlock, to reflect his surname, despite the mother’s opposition. D.S. v. A.E.H., 117 WLR 2301 (Super. Ct. 1989).

## § 16-2346. Certificate to Registrar.

(a) Upon entry of a final judgment determining the parentage of a child, the clerk of the court shall forward a certificate to the Registrar of the District of Columbia, or his authorized representative in the jurisdiction in which the child was born, giving the names of the persons adjudged to be the parents of the child.

(b) Repealed.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(e), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(h), 28 DCR 3271; July 18, 2008, D.C. Law 18-33, § 3(o), 56 DCR 4269.)

**Prior Codifications.** — 1981 Ed., § 16-2346.

1973 Ed., § 16-2346.

**Effect of amendments.** — D.C. Law 18-33, in subsec. (a), deleted “born out of wedlock” following “child”, and substituted “parents” for “father and mother”.

**Legislative history of Law 1-87.** — For

legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 4-34.** — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 16-2345.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

## § 16-2347. Death of respondent; liability of estate.

If the respondent dies after parentage has been established and prior to the time the child reaches the age at which the child ceases to be a minor, any sums

due and unpaid under an order of the court at the time of his or her death shall constitute a valid claim against his or her estate.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(f), 23 DCR 2544.)

**Prior Codifications.** — 1981 Ed., § 16-2347.  
1973 Ed., § 16-2347.

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

#### CASE NOTES

##### **Priority of claims.**

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who were illegitimate but who had been ac-

knowledgeed by him, were entitled to take precedence over the claim of his mother. 5 U.S.C. § 8705(a); D.C. Code §§ 16-2341, 16-2342, 16-2347. *Green v. Green*, 365 A.2d 610, 1976 D.C. App. LEXIS 404 (1976).

## § 16-2348. Parentage records; confidentiality; inspection and disclosure.

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11-1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, the IV-D agency, or authorized professional staff of the Superior Court. Any inspection shall be subject to the safeguards provided by section 16-925. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the other parent, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon request, to the IV-D agency and the Corporation Counsel for use as evidence in nonsupport proceedings and to the Registrar as provided by section 16-2346(a).

(b) No person shall disclose, receive, or use records in violation of this section. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(g), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(a), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(s), 35 DCR 147; Apr. 3, 2001, D.C. Law 13-269, § 106(r), 48 DCR 1270.)

**Prior Codifications.** — 1981 Ed., § 16-2348.  
1973 Ed., § 16-2348.

**Effect of amendments.** — D.C. Law 13-269, in subsec. (a), added "the IV-D agency," following "attorneys of record,"; added "Any



inspection shall be subject to the safeguards provided by section 16-925." following the first sentence and added "the IV-D agency and" following "furnished, upon request, to".

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 5(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 5(t) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 105(t) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 105(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary amendment of section, see § 5(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), and § 5(p) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923).

Section 16 of D.C. Act 12-309 provided for the application of the act.

For temporary amendment of section, see § 5(s) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(s) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(s) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 4-34.** — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 16-2345.

**Legislative history of Law 7-104.** — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 16-2316.

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Editor's notes.** — Section 4(s) of D.C. Law 7-104 purported to substitute "Director of the Department of Human Services" for "Director of Public Health" in subsection (a) apparently without regard to the amendment of this section by D.C. Law 4-34.

## § 16-2349. Inclusion of social security numbers in parentage records.

The social security number of the parents and child who are parties to a parentage determination or acknowledgment shall be included in the Superior Court and IV-D agency records relating to the determination or acknowledgment.

(Apr. 3, 2001, D.C. Law 13-269, § 106(s), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(p), 56 DCR 4269.)

**Effect of amendments.** — D.C. Law 18-33, in the section heading, substituted "parentage" for "paternity"; substituted "parents" for "mother, father," and "parentage" for "parents".

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 5(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) addition of section, see § 5(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 105(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 105(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary addition of § 16-2349 1981 Ed., see § 5(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

## § 16-2349.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

For temporary addition of § 16-2349 1981 Ed. and 16-2349.1 1981 Ed., see § 5(q) and (r) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923).

For temporary addition of § 16-2349 1981 Ed. and 16-2349.1 1981 Ed., see § 5(t) and (u) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 5(t) and (u) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 5(t) and (u) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary addition of § 16-2349 1981 Ed., see § 105(u) of the Child Support and

Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary repeal of D.C. Law 12-210, see § 113 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90 day) amendment of section, see § 105(t) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, October 24, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 105(u) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, October 24, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 106(s) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

### § 16-2349.01. Child support pendente lite.

Upon motion of a party in a parentage or support action or proceeding, the Superior Court shall issue an order of child support pending a determination of parentage if there is clear and convincing evidence of parentage. Evidence of parentage may include a genetic test result that does not create a conclusive presumption of parentage pursuant to section 16-909(b-1)(1).

(Apr. 3, 2001, D.C. Law 13-269, § 106(t), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(q), 56 DCR 4269.)

**Effect of amendments.** — D.C. Law 18-33 substituted "parentage" for "paternity".

**Temporary Addition of Section.** — For temporary (225 day) addition of section, see § 5(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) addition of section, see § 5(v) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 105(v) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 105(v) of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

**Emergency legislation.** — For temporary addition of § 16-2349.1 1981 Ed., see § 5(r) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of § 16-2349.1 1981 Ed., see § 105(v) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90 day) addition of section, see § 105(v) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, October 24, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 106(t) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).



**Legislative history of Law 13-269.** — For D.C. Law 13-269, see notes following § 16-901.

**Legislative history of Law 18-33.** — For Law 18-33, see notes following § 16-308.

**Editor's notes.** — Section 28(c)(8) of D.C. Law 15-354 provided that the section designation of § 16-2349.1 of the District of Columbia Official Code is redesignated as § 16-2349.01.

### *Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children.*

## **§ 16-2351. Purpose of the subchapter; construction of provisions.**

(a) The general purposes of this subchapter are to:

(1) encourage stability in the lives of certain children who have been adjudicated neglected and have been removed from the custody of their parent by providing judicial procedures for the permanent termination of the parent and child relationship in the circumstances set forth in this subchapter;

(2) ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

(3) increase the opportunities for the prompt adoptive placement of children for whom parental rights have been terminated.

(b) This subchapter shall be liberally construed to promote the general purposes stated in this section.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2351.  
1973 Ed., § 16-2351.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### **CASE NOTES**

#### **ANALYSIS**

Construction and application.

Due process.

In general.

Private actions.

Prompt placement.

Purpose.

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Review.

Time limitations.

#### **Construction and application.**

Court must construe factors in parental rights termination statute liberally in order to promote general purposes of termination statute of encouraging stability in children's lives, ensuring recognition of all parties' constitutional rights, and increasing opportunities for prompt adoptive placement for children for whom parental rights have been terminated. D.C. Code 1981, § 16-2351(a, b). In re Baby

Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

#### **Due process.**

Children in foster care under supervision of District of Columbia Department of Human Services (DHS) had liberty interest in reasonably safe placements in which they would not be harmed; this right was not limited to safety from physical harm, and extended to safety from psychological and emotional harm. D.C. Code 1981, §§ 3-802(a), 6-2102(b), 6-2107, 6-2123; U.S. Const. Amend. 5; 42 U.S.C. § 1983. LaShawn A. v. Dixon, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Even after children have been found to be neglected, the birth parents retain an important and essential liberty interest in raising their children, and the termination of parental rights is a drastic remedy and may be ordered

only upon a showing of clear necessity; thus, this interest may be overridden only if there is clear and convincing evidence presented that continuing the parent-child relationship would be contrary to the best interests of the children, and not merely that the adoption would be more beneficial to the children's interests. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

A birth parent has a fundamental liberty interest in the care, custody, or control of her child. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

The fundamental due process liberty interest of natural parents in the care, custody and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Natural parent's due process rights do not include as condition precedent to termination of parental rights that state agency having custody of minor child make affirmative efforts to reunite family; although effort of public custodial agency to reintegrate family is relevant factor in decision-making process in proceeding to terminate parental rights, such termination is not precluded solely because custodial agency has failed in its responsibility to make efforts to reunify family. D.C. Code 1981, § 16-2351 et seq.; U.S. Const. Amend. 14. In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

Permitting child to be adopted by his great aunt and uncle following termination of mother's parental rights did not violate due process on grounds that trial judge did not adopt least drastic means possible for achieving child's best interest. U.S. Const. Amend. 14; D.C. Code 1981, §§ 16-309, 16-2351, 16-2353, 16-2353(a). In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

Natural parent's interest in preserving parent-child relationship is a "commanding" factor in determination of what process is due to natural parent in termination proceeding. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Failure of trial court to grant a continuance sua sponte to allow physician to form an opinion of natural mother's ability to care for infant did not deny natural mother due process of law in proceeding to terminate parental rights where physician could not have predicted what his prognosis would be in six months and other physicians testified that natural mother was a chronic paranoid schizophrenic. U.S.C.A. Const. Amend 14. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Inasmuch as trial court in termination proceedings arrived at its determination of how to serve minor's best interests by considering various factors listed in termination statute,

mother was not deprived of Fifth Amendment's due process guarantees because trial court terminated her parental rights solely due to fact that she suffered from a mental illness. U.S. Const. Amends. 5, 14; D.C. Code 1978 Supp. § 16-2351 et seq. In re L., 434 A.2d 1004, 1981 D.C. App. LEXIS 349 (1981).

### **In general.**

The termination of parental rights is a drastic remedy, and may be ordered only upon a showing of clear necessity. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

In proceeding to terminate parental rights, what is relevant to trial court's decision is quality of specific relationship at issue, not some generalized view of importance of parent's interest in child. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

### **Private actions.**

District of Columbia's Prevention of Child Abuse and Neglect Act creates private right of action for children in foster-care system and for children reported to have been abused or neglected but not yet in the District's custody, under which children who remained subject to abuse and neglect at the hands of their parents and guardians or who languished in inappropriate foster care placements with little hope of adoption could seek injunctive relief against District officials. D.C. Code 1981, §§ 2-1351 to 2-1357, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. LaShawn A. by Moore v. Kelly, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

District of Columbia's Youth Residential Facilities Licensure Act permits children in foster care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to "the care" of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357, 3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. LaShawn A. by Moore v. Kelly, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

### **Prompt placement.**

Record supported finding in proceeding to terminate mother's parental rights that termination would increase the opportunities for prompt adoptive placement; child had a realistic possibility of future adoptive placement, in that five families had expressed interest in adopting him, and two families had already begun the process of becoming licensed adoptive parents, and, while child was not ready to



go home with an adoptive family at the time of termination decision and identification of potential adoptive families was still at the preliminary stages, child was likely to be ready for adoption when he completed his residential treatment program. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Record supported finding in proceeding to terminate mother's parental rights that termination would encourage stability in child's life; record showed that, upon completion of his treatment program, child would have a substantial chance of being adopted and that this chance would be increased by the termination of mother's parental rights. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Trial court's express finding that two-year-old child was suitable for adoption at present time in view of age and health characteristics was sufficient to satisfy statutory requirement for termination of parental rights on ground of neglect that termination would promote timely integration of child into stable and permanent home, despite lack of testimony by Department of Human Services officials that termination would enhance prospects for adoptive placement; finding was based on child's age and physical and emotional development. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

#### **Purpose.**

Record supported finding that trial court's order terminating mother's parental rights did not conflict with purpose for which termination statute was enacted, which was ensuring the recognition and enforcement of the constitutional rights of all parties; while trial court afforded recognition to mother's constitutional rights to care, custody, and management of child, such rights had to give way to the best interest of child, which was termination of mother's parental rights. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Purposes of statute authorizing termination of parental rights (TPR) proceedings are to encourage stability in the life of the neglected child, to ensure the recognition and enforcement of the constitutional rights of all parties; and to increase the opportunities for prompt adoptive placement. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

#### **Putative fathers.**

Trial court in termination of parental rights (TPR) proceeding has authority to consider putative fathers as "parents" and to terminate their rights and interests in the child without recourse to separate adoption proceedings. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in termination of parental rights (TPR) proceeding abused its discretion in failing to recognize that it had the alternative to terminate rights of two putative fathers, even though paternity had not been established and neither man appeared at the hearing, where child's counsel represented that one of the men was personally served notice and where alternative service of the other by posting was granted after he could be located by search of appropriate records. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

In a termination of parental rights (TPR) proceeding, there is no legal prohibition to the trial court's resolving the issue of paternity of a putative father who has been identified by the child's mother as the father or who claims that status, provided he has been afforded proper notice and an opportunity to be heard. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in a termination of parental rights (TPR) proceeding has authority under TPR statute to resolve finally any claimed putative father's right to assert paternity in a subsequent proceeding provided he has been served properly with notice and has been afforded an opportunity to be heard on the issues. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

#### **Review.**

In evaluating a trial court's conclusion that termination of parental rights was in the child's best interest, Court of Appeals consider the three purposes for which the statute providing for the termination of parental rights was enacted: (1) to encourage stability in the life of the neglected child; (2) to ensure the recognition and enforcement of the constitutional rights of all parties; and (3) to increase the opportunities for prompt adoptive placement. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Court of Appeals must determine whether the trial court's decision to terminate a parent's rights is supported by clear and convincing evidence, and it must be satisfied that the possibility of an erroneous judgment does not lie in equipoise between the two sides. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Upon reviewing a trial court's determination to terminate parental rights, an appellate court may not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Mother who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have

been terminated or an order of adoption has been entered. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Trial judge's order refusing to modify an earlier ruling in which she had barred any visitation between teenager and her mother and prohibiting any visitation between teenager and her mother's sister was final, for purposes of appeal, with respect to the visitation issue; no motion for termination of parental rights had been filed, and no petition to adopt teenager was pending, judge's decision prohibited visitation under entirely new circumstances, namely teenager's motherhood, and denial of visitation had continued for more than four years. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

In evaluating trial court's conclusion that termination of parental rights is in child's best interests, Court of Appeals considers three purposes for which statute providing for termination of parental rights was enacted: to encourage stability in life of neglected child; to ensure recognition and enforcement of constitutional rights of all parties; and to increase opportunities for prompt adoptive placement. D.C. Code 1981, § 16-2351(a). In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Record in proceeding for termination of parental rights (TPR) did not show by clear and convincing evidence that hospital in which minor child adjudicated neglected was residing at time of TPR hearing offered greater potential for bringing stability into child's life than efforts of child's natural parents would provide if supported by meaningful assistance from social services; child had no meaningful prospects for adoption and was low on scale of adoptability, and termination of parental rights under circumstances would increase only slightly child's chances for adoption. D.C. Code 1981, § 16-2351(a). In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

#### Time limitations.

New act, effective September 30, 1977, which provides for termination of all parental rights in neglect proceeding, does not provide for permanent termination of parental visiting rights as such and does not amend statute prescribing time limits on dispositional orders, and thus in child neglect proceedings, dispositional orders concerning termination of parental visitation rights are subject to those time limitations. D.C. Code §§ 16-2322, 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

## § 16-2352. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Parent and child relationship" includes all rights, powers, privileges, immunities, duties and obligations existing under law between a parent and child, including rights of inheritance. The words apply equally to every child and every parent regardless of the marital status of the parents of the child.

(2) "termination of the parent and child relationship" means the adjudication that a child is free from the custody and control of either or both of his or her living parents by means of a court order that completely severs and extinguishes the parent and child relationship.

(b) The terms found in this subchapter which are defined in section 16-2301 of this chapter shall be given the same definition herein.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2352.  
1973 Ed., § 16-2352.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## § 16-2353. Grounds for termination of parent and child relationship.

(a) A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.



(b) In determining whether it is in the child's best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

(1) the child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

(3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;

(3A) the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(4) to the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 4(b), (c), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(d), 37 DCR 2613; Mar. 24, 1998, D.C. Law 12-81, § 10(hh), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(b)(2), 46 DCR 2118.)

**Prior Codifications.** — 1981 Ed., § 16-2353.

1973 Ed., § 16-2353.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 8-87.** — For legislative history of D.C. Law 8-87, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 8-134.** — For legislative history of D.C. Law 8-134, see His-

torical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-264.** — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 16-2345.

## CASE NOTES

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### **Absence of adoptive home.**

Documents suggesting that children's current foster parents had reached decision that they did not wish to adopt children did not preclude affirmance of order terminating parental rights, particularly as trial court had not acted on basis of anticipated adoption, but had specifically noted that foster parents had not reached decision regarding adoption; trial court focused primarily on poor relationship that parents had with children, rather than increased possibility of adoption by foster parents if motion was granted. D.C. Code 1981, § 16-2353(b)(2). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Although prospect of adoption is one factor in assessment of whether termination of parental rights is in child's best interest, lack of prospective adoptive home does not preclude trial court from granting motion to terminate parental rights. D.C. Code 1981, § 16-2353(b)(2). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Trial court could not properly decline to terminate mother's parental rights on ground that child's prospects for adoption were insufficient or marginal, where two petitions to adopt child were pending. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Fact that no prospective adoptive parents had been identified for child did not bar termination of parental rights. In re A.W., App. D.C., 569 A.2d 168, 119 WLR 1033 (1990).

### **Adoption proceedings.**

In the case of a contested adoption between two non-parents, trial court did not abuse its discretion in making its best interests determination and concluding that granting prospective adoptive parents' adoption petition would be in the best interests of the children; court did

not base its decision on only one factor, but on several, one-year-old twins had been in care of adoptive parents since birth, children had need for continuity of care and caretakers, and there were other adopted children in home of adoptive parents. In re T.J.L., 998 A.2d 853, 2010 D.C. App. LEXIS 407 (2010).

A determination as to whether the natural parents are withholding their consents to adoption contrary to a child's best interest requires the weighing of the statutory factors considered in termination of parental rights proceedings. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

Waiver of mother's consent to children's adoption by their foster parents was supported by evidence; quality of interaction and relationship between children and their foster parents was positive, constructive, and healthy, evidence indicated that children wished to remain with foster parents, and mother admitted that her struggles with drug dependency continued. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Because the granting of an adoption over the objection of the natural parent necessarily curtails that person's parental rights, which are of such grave importance that they are classified as fundamental, the court must weigh the statutory factors considered in proceedings to terminate parental rights before the adoption petition will be granted. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Clear and convincing evidence supported conclusion that children's physical, mental, and emotional needs were being met by prospective adoptive parents, which, in turn, supported trial court's waiver of mother's and father's consents to children's adoption; child had special needs, which needs were being met by way of participation in physical, occupational, and speech therapies, prospective adoptive parents had ability to address child's special needs, child had made progress while in their care, and prospective adoptive parents had long-term commitment to each other and steady employment. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Clear and convincing evidence supported conclusion that children needed and enjoyed continuity of care in home of prospective adoptive parents and that children enjoyed positive interactions with this family, which, in turn, supported trial court's waiver of mother's and father's consents to children's adoption; one child had lived with prospective adoptive parents all but nine months of his life, other child had lived there virtually her entire life, and there was high degree of bonding between children and prospective adoptive parents. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).



Trial court's refusal, at hearing in adoption proceeding to determine whether birth parents were withholding consent contrary to child's best interests, to allow birth parents to present evidence challenging fitness of prospective adoptive parents was not abuse of discretion, as purpose of hearing was to determine fitness of birth parents. *In re P.S.*, 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

Determination in adoption proceeding that birth parents of special needs child were withholding their consent to adoption contrary to child's best interests was not abuse of discretion; birth parents continued to struggle with cocaine addiction and had demonstrated little commitment to preparing themselves to meet child's needs, large sums that they appeared to spend on children currently residing with them could have been spent on visits to special needs child, and difference in race between that child and prospective adoptive parents was insignificant in view of child's health needs. *In re P.S.*, 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

Where there is overwhelming evidence introduced that child's best interest will be served by his prompt integration into permanent and stable home, and no viable family placement is available, adoption is the preferred alternative, and because prospective adoptive parents are reluctant to consider an "at risk" adoption, where natural parent may oppose and contest adoption, termination of parental rights is critical to increasing chances of adoption and, consequently, to increasing likelihood that best interests of the children will ultimately be served. *In re Tw.P.*, 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Prospective adoptive placement was not required before court could terminate father's parental rights. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). *In re C.T.*, 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

It was in neglected children's best interests to terminate incarcerated father's parental rights to allow foster mother to adopt children, instead of placing children with father's mother or sister as he requested, where children had bonded with foster mother for nearly two years. D.C. Code 1981, § 16-2359(f). *In re An.C.*, 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

Termination of parental rights may properly be entered even where no specific adoptive parents have been identified, where child is adoptable and termination would enhance child's prospects for appropriate adoptive placement. D.C. Code 1981, § 16-2353(b). *In re A.R.*, 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Foster mother, who was white lesbian seeking to adopt African-American boy, failed to show by clear and convincing evidence that natural mother's custody choice, the child's

great-aunt, was clearly not in the child's best interest, and, thus, custody would be granted to great-aunt, where although child was attached to foster mother, there was overwhelming evidence that great-aunt would ensure that boy would be in the company of his cousins and sister, and natural mother, who was unable to care for the child because she was mentally ill, had expressed preference for the great-aunt. D.C. Code 1981, § 16-2353(b). *In re T.J.*, 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Termination of natural mother's parental rights, and allowing child to be adopted by foster mother, was in child's best interest, though natural mother made attempts to kick her drug addiction and clearly loved child, where mother's relapses occurred as often as she entered treatment programs and made her unable to provide child with permanent and stable home, mother was unable to take care of child's physical, mental, and emotional needs, child bonded well with her foster family, and foster mother was committed to caring for and rearing child. *In re T.M.*, 665 A.2d 950, 1995 D.C. App. LEXIS 197 (1995).

In determining whether to grant motion to terminate parental rights and application for adoption over objection of parent, trial court could not disregard fact that child had been living with prospective adoptive parent for more than half of his life, particularly in light of uncontradicted expert testimony that it would be detrimental to remove child from prospective adoptive parent's home. D.C. Code 1981, § 16-2353(b). *In re L.L.*, 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

It was in best interests of child to terminate father's parental rights and to allow foster mother to adopt child, where child was fully integrated into stable adoptive home, living situation of father was unstable if not chaotic before child was removed from that environment, foster mother's mental and emotional health were unchallenged, father's emotional health was significantly impaired, father had been convicted of taking indecent liberties with seven-year-old girl and had long criminal history, child's relationship with foster mother was very warm, and placement with father would expose child to continued risks associated with natural mother's cocaine addiction. D.C. Code 1981, § 16-2353(b). *In re L.L.*, 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Determination whether child's best interests warrant approval of application for adoption over natural parent's objection is within discretion of trial court; exercise of that discretion, however, must be based upon correct legal principles. D.C. Code 1981, § 16-2353(b). *In re*

L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

On application to adopt child over objection of parent and motion to terminate parental rights, court's first duty is to protect child from any unwarranted danger of harm. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Trial court improperly refused to terminate parental rights based substantially by reference to how termination would affect concurrent contested adoption proceedings, without considering all relevant adoption issues through a consolidated termination/adoption proceeding. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Termination of parental rights is permissible even though separate adoption proceeding as to same child is pending. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Trial judge's failure, in contested adoption petition, to invoke contested adoption statute when he granted adoption decree was not an abuse of discretion, or a substitution of standards governing termination of parental rights for those governing consideration of adoption petitions, even though some of judge's oral and written findings and conclusions appeared in context of termination of parental rights analysis, where judge's oral and written findings demonstrated that he gave careful consideration to physical and mental suitability of child for adoption and whether the prospective adoptive parent would provide an adequate home and education for the adoptee. D.C. Code 1981, §§ 16-309(b), (b)(1, 2, 4), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

In a contested adoption, the statutory standard necessarily encompasses an inquiry into whether termination of relationship between the child and the natural parents is in the best interest of the child, which is an inquiry properly guided by standards set out in termination of parental rights statute. D.C. Code 1981, §§ 16-309(b)(3), 16-2353(b). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Trial judge's finding that any relationship between natural mother and her child during visits was insufficiently developed to justify denial of contested adoption petition was supported by clear and convincing evidence, including evidence that the visits began after 19 months of neglect, mother completely failed to attempt to secure a stable home environment, and child had lived with proposed adoptive parent during past year, even though visits reflected stirrings of interest by mother in raising child. D.C. Code 1981, § 16-2353(b), (b)(3). In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

#### **Basis of findings, generally.**

A parent's poverty, ill health, or lack of education or sophistication will not alone consti-

tute grounds for termination of parental rights. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Change in agency's goal for mother and children from reunification to termination of mother's parental rights was appropriate under circumstances of case, where termination was clearly in children's best interests; children were doing well in foster care and expressed no interest in seeing mother, and mother had provided no financial support for children and made no meaningful effort to demonstrate her readiness to assume responsibilities of parenting. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Trial court's determination that it was not in best interests of children subject to protection proceedings to delay ruling on their custody and care while mother sought to prepare herself to assume responsibility for them, or to place them in care and custody of mother's sister as interim caretaker, was proper exercise of discretion, where children's best interests, rather than mother's interest in maintaining her parental rights, were paramount. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Trial court may terminate parent-child relationship when it determines, on basis of evidence presented and after due consideration of best interests of all parties, that termination is in best interests of the child. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

To a certain extent, what occurred during the neglect proceeding is related and relevant to the ultimate step of termination of parental rights; nonetheless, the factual findings of a neglect proceeding alone may not serve as the basis for an order terminating parental rights. In re J.M.C., 741 A.2d 418, 1999 D.C. App. LEXIS 275 (1999).

In determining whether drastic measure of terminating parental rights is required in child's best interests, court must consider adoptive prospects of child along with other relevant factors. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court must satisfy itself that possible benefits of termination of parental rights clearly outweigh costs of deferring decision. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Lack of bonding between minor child and natural parents was significant factor in determining best interests of child in proceeding for termination of parental rights (TPR), but could not support termination where child had not bonded with any prospective substitute parent. D.C. Code 1981, § 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).



A putative father has a right to grasp his opportunity interest in claiming the obligations of being a parent; if he fails to do so, however, the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie. U.S. Const. Amend. 14. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

In proceeding to terminate parental rights, trial court was not obliged to consider mother's interest in isolation from interests of child. D.C. Code 1981, § 2353(a), (b). In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In proceeding to terminate parental rights, what is relevant to trial court's decision is quality of specific relationship at issue, not some generalized view of importance of parent's interest in child. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In proceeding to terminate parental rights, fact that parent's interest in preserving parent-child relationship may be great is not as significant as fact that parent may be unwilling or unable to fulfill child's most basic needs. In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

In termination of parental rights proceeding, continuity of care, stability of performance of home environment, physical, mental and emotional health, interactions and interrelationships, and child's judgment on ultimate question all focus on fitness of natural parents and properly balance all constitutionally cognizable interests at stake in such a case. D.C. Code 1981, § 16-2353(b); U.S.C. Const. Amends. 5, 14. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Superior Court would construe the 'best interest' standard in a manner that afforded a custodial preference to a "fit" parent, as relying solely on the neglect statute and a prior neglect adjudication would not give proper weight and deference to mother's rights in contested case in which great-grandmother sought legal custody of minor child. In the Matter of Minor Child T.C., 131 WLR 1449 (Super. Ct. 2001).

### **Best interest of child.**

Clear and convincing evidence supported the trial court's finding that child's adoption by maternal relative would be contrary to child's best interests, in proceeding in which maternal relative and foster parent each sought to adopt child; child had resided with foster parent for many years, child shared a close parent-child bond with foster parent, and expert testified that disrupting child's attachment with foster parent would cause short and long term consequences to child. In re T.W.M., 18 A.3d 815, 2011 D.C. App. LEXIS 217 (2011).

Trial court did not abuse its discretion, at hearing on adoption petition filed by couple with whom neglected child had been placed, by

finding that the biological mother had withheld her consent to the adoption contrary to the child's best interest and waived her consent to the adoption; at the time of the hearing the four-year-old child had lived with the adoptive couple for approximately half her life and had known the couple even longer, social worker testified that it would be very disruptive for the child if she left couple's home and that biological mother did not have stable housing, though couple were in their seventies they were in good health and had formed a strong bond with the child, biological mother failed to participate in recommended services including therapy, biological mother had limited interaction with the child, and biological mother failed to appear at show cause hearing. In re W.D., 988 A.2d 456, 2010 D.C. App. LEXIS 16 (2010).

Evidence supported trial judge's findings that mother's mental health was "in serious doubt" and that termination of the parent-child relationship was in child's best interest; doctor testified that mother had a borderline ability to function as an adequate parental caregiver, both now and in the future, and social workers' testimony also provided ample support for this conclusion, mother became "defiant" about participating in mental health services, mother talked to herself and at one point arrived to a visit wearing underwear on her head, and mother would "drift off" during visits and failed to properly supervise child. In re A.B., 955 A.2d 161, 2008 D.C. App. LEXIS 375 (2008).

Evidence supported trial court's determination that mother was withholding her consent to children's adoption by their foster mother contrary to their best interests; foster mother was children's primary caretaker, and continuity of their care was best served by allowing them to remain with her, physical, mental, and emotional health of foster mother was exemplary, and she was exceptionally suited to care for needs of children, including their special medical needs stemming from their prenatal cocaine exposure and premature birth, foster mother was eager to maintain and foster children's familial relationships, mother had abandoned children at birth, and she continued to abuse drugs. In re A.T.A., 910 A.2d 293, 2006 D.C. App. LEXIS 582 (2006).

Allowing child's paternal great-aunt to adopt child rather than giving aunt guardianship over child was in child's best interest, even though aunt was 78 years old and was unlikely to live to see child reach the age of majority, where aunt had made financial arrangements for child and arranged for two backup caretakers, ages 67 and 41, who were known to child, to take care of child in the event that aunt died or became disabled, removing child from aunt's care would likely have had a severe impact on child's emotional development given that aunt had cared for child since she was two months

old, and adoption provided the permanency and stability child needed. In re A.C.G., 894 A.2d 436, 2006 D.C. App. LEXIS 135 (2006).

It is left to the sound discretion of the trial court to determine what is in the best interests of the child in any adoption case. In re A.C.G., 894 A.2d 436, 2006 D.C. App. LEXIS 135 (2006).

#### **Change in circumstances.**

Assuming that Superior Court had equitable power to entertain mother's post-trial motion for reconsideration of termination of parental rights (TPR), death of child's sibling and evidence that foster mother did not intend to adopt the child did not constitute newly discovered evidence or changed circumstances warranting reconsideration; death of sibling was not newly discovered since it occurred after trial and after entry of TPR order, trial court's decision to terminate parental rights had relied on significant factors in addition to the demands that caring for sibling had been imposing on mother, and trial court had not relied on potential adoption of child by foster mother. In re D.A., 990 A.2d 530, 2010 D.C. App. LEXIS 91 (2010).

In parental termination proceeding, breakdown in relationship between child and proposed adoptive parent, with resulting disappearance of immediate prospect of adoption, after entry of termination order was significant change in circumstances which warranted reassessment of child's best interests. D.C. Code 1981, § 16-2353(a, b). In re D.G., 583 A.2d 160, 1990 D.C. App. LEXIS 295 (1990).

The Court refused to declare an adoption decree an independent order terminating parental rights where the couple no longer wished to adopt, and such a change in circumstances required a full hearing to decide on terminating parental rights. In re J.A., 119 WLR 941 (Super. Ct. 1991).

#### **Child's opinion.**

The trial court adequately considered child's preferences when ruling on adoption petitions, in proceeding in which maternal relative and foster parent each sought to adopt child; the record contained numerous references to child's opinions and behavior relating to her relationships with her foster mother and maternal relative. In re T.W.M., 18 A.3d 815, 2011 D.C. App. LEXIS 217 (2011).

While it is preferable for judges to hear directly from the children involved in proceedings to determine whether natural parents are withholding their consents to adoptions of children contrary to children's best interests if it is at all feasible to do so, the statute setting forth ground for termination of parent and child relationship does not say the judge must derive this opinion even partly from questioning of the

children themselves. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

It was appropriate for trial court, in evaluating children's opinion of their best interests for purposes of determining whether natural parents were withholding their consents to adoptions of children by foster parents contrary to children's best interests, to consider testimony of other witnesses who had directly observed the children. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

While it is preferable for judges to hear directly from the children involved in termination of parental rights proceedings if it is at all feasible to do so, statute requiring court to consider child's opinion about his own best interests "to the extent feasible" does not say the judge must derive this opinion even partly from questioning of the child himself. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

The matter of whether trial judge hears directly from children involved in termination of parental rights proceedings to ascertain their wishes is within the judge's discretion, taking into account whether children are old or competent enough to voice an opinion. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

It is preferable for judges to hear directly from the children involved in termination of parental rights proceedings to ascertain their wishes if it is at all feasible to do so. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Trial court did not abuse its discretion in ascertaining children's wishes from evidence presented, rather than hearing from children themselves, in proceeding to determine whether mother's consent to children's adoption was required; although children, who were 11 and 13 at time of hearing, might well have been able to express their opinions to court, there was evidence presented not only through social workers, but from mother herself, that children did not want to return to live with her under conditions that prevailed when they were removed from her care, which conditions remained at time of trial, children's guardian ad litem supported foster parents' adoption petition, and mother had not been impeded from calling children as witnesses. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Trial judge was free to fully consider testimony of social workers that children had voiced preference to remain with their foster parents, in proceeding to determine whether mother's consent to children's adoption was necessary, as mother did not make any hearsay objection at trial, or on appeal. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).



Trial court did not err in failing to ascertain child's opinion of his own best interests in adoption proceeding, which was being contested by birth mother, where child was less than five years old at the time of the hearing and had limited acquaintance with his biological mother. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Provision of parental rights termination statute requiring trial court to consider child's opinion of his or her best interest did not require trial court to solicit evidence of six-year-old child's opinion, either from child or other witnesses, in proceeding in which neither party adduced evidence of child's opinion. D.C. Code 1981, § 16-2353(b)(4). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Lack of record information regarding six-year-old child's opinion of his own best interest did not preclude termination of father's parental right; father had dropped out of child's life, and child did not know him at all. D.C. Code 1981, § 16-2353(b). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

A parent does not have a statutory right to call a child in proceeding to terminate parental rights; rather, the Legislative Branch enacted language providing that the trial judge must weigh several factors, only one of which is, to the extent feasible, the child's opinion of his or her own best interest. In the Matters of M.D. and B.D., 135 WLR 1193 (Super. Ct. 2007).

The issue of feasibility, under termination of parental rights statute requiring court to weigh, to the extent feasible, the child's opinion of his or her own best interest, includes a number of variables, including but not limited to whether the child is competent to render an opinion on the particular issue that confronts the court, whether the child's opinion is already available from other evidence, and whether requiring the child to testify or even submit to a chambers interview would be harmful to the child. In the Matters of M.D. and B.D., 135 WLR 1193 (Super. Ct. 2007).

In compliance with the termination of parental rights statute, magistrate judge had rational basis for finding that hearing live testimony from seven- and nine-year-old children was not feasible; to do so would have been superfluous, in light of what was already known about the words and behavior of children, all of which demonstrated their ultimate preference for completing the process of having a new and permanent home with someone other than their mother. In the Matters of M.D. and B.D., 135 WLR 1193 (Super. Ct. 2007).

It would have been detrimental to six-year-old child to return her to mother's custody, in light of evidence that emotionally fragile child had "peer like" relationship with mother, even though child indicated a desire to live with mother and her minor sister. In the Matter of

Minor Child T.C., 131 WLR 1449 (Super. Ct. 2001).

### **Construction and application.**

Enactment in 1977 of new procedure for permanently terminating all parental rights, in order to facilitate adoption, does not imply authority of court to order permanent termination of fewer than all parental rights, such as right to visitation. D.C. Code §§ 16-2351 to 16-2365. In re H.M., 386 A.2d 707, 1978 D.C. App. LEXIS 383 (1978).

### **Court-ordered custody.**

Neglected children, who had been placed under shelter care, had been placed in "court-ordered custody," as required for termination of mother's parental rights. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

### **Drug-related activity.**

Evidence of a parent's continued drug-activity shall be given great weight in a termination of parental rights proceeding. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

For purposes of determining whether to terminate mother's parental rights as to child, statute governing consideration factor of whether drug-related activity continued to exist in child's home environment after intervention and services had been provided did not afford mother a statutory right to drug intervention and services before her parental rights as to child could be terminated based at all upon her history of drug abuse; factor was not limitation on judge's authority to consider evidence of drug abuse, past or continuing, in applying other statutory factors. D.C. Code 1981, § 16-2353(b), (b)(5). In re D.R., 673 A.2d 1259, 1996 D.C. App. LEXIS 52 (1996).

There was no evidence that drug-related activity continued in parents' home after intervention and services had been provided, as would support termination of parental rights. D.C. Code 1981, § 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

### **Due process.**

A birth parent has a fundamental liberty interest in the care, custody, or control of her child. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

The right of a parent to raise his or her child is of constitutional dimension; it has been characterized as "essential" and as "far more precious than property rights." In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Natural parent's due process rights do not include as condition precedent to termination of parental rights that state agency having custody of minor child make affirmative efforts to reunite family; although effort of public custodial agency to reintegrate family is relevant

factor in decision-making process in proceeding to terminate parental rights, such termination is not precluded solely because custodial agency has failed in its responsibility to make efforts to reunify family. D.C. Code 1981, § 16-2351 et seq.; U.S. Const.Amend. 14. In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

Permitting child to be adopted by his great aunt and uncle following termination of mother's parental rights did not violate due process on grounds that trial judge did not adopt least drastic means possible for achieving child's best interest. U.S. Const.Amend. 14; D.C. Code 1981, §§ 16-309, 16-2351, 16-2353, 16-2353(a). In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

When extinction of parental rights is at stake, due process requires that the trial court consider the quality of the relationship between the natural parent and the child. D.C. Code 1981, § 16-2353(b)(3); U.S. Const.Amend. 5, 14. In re D.R.M., 570 A.2d 796, 1990 D.C. App. LEXIS 41 (1990).

Natural parents' constitutional rights are relevant only to the question of what process is due in a termination proceeding, and the proceeding requires no balancing of the parents' interest against those of the child. U.S.C. Const.Amend. 14; D.C. Code 1981, § 16-2353(a). In re A.B.E., 564 A.2d 751, 1989 D.C. App. LEXIS 191 (1989).

A finding of parental unfitness is not required by due process clause of Fifth Amendment as prerequisite for involuntary termination of parental rights. D.C. Code 1981, § 16-2353(b); U.S. Const.Amend. 5, 14. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

### Equal protection.

Rights of the natural parents to bring up their children are subject to protection of due process and equal protection clauses, but those rights are not absolute and must give way before the child's best interest. U.S. Const.Amend. 14; D.C. Code 1981, § 16-2353(a). In re A.B.E., 564 A.2d 751, 1989 D.C. App. LEXIS 191 (1989).

### Expert testimony.

In proceeding to terminate parental rights, trial court could not disregard unimpeached testimony of two experts, one of whom was selected by counsel for parent, to the effect that father was an unfit parent, particularly as such testimony was consistent with common sense, in light of father's recent conviction of indecent liberties with a child and long record of criminal activity, emotional disturbance, threatening conduct, homicidal ideation, and suicide attempts. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Purported absence of specific designation for father's mental condition did not render expert's evaluation insufficient to support trial judge's findings and conclusions in support of termination of father's parental rights; expert testified that father suffered from personality disorder that was likely to have destructive effect on his children. D.C. Code 1981, § 16-2353(b). E.C. v. District of Columbia, 589 A.2d 1245, 1991 D.C. App. LEXIS 99 (1991).

### Family members.

In a child protection proceeding, when there still may be value in retaining at least the stabilizing influence, and the sense of identity, that some continuing legal relationship with natural relatives may ultimately bring, termination of parental rights may be unwarranted if there is no reasonable likelihood of adoption because of the absence of any substantial good to be achieved for the child. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Availability of suitable family member, willing to assume legal custody of the child, is important consideration in court's decision whether to terminate parent-child relationship. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

In proceeding to terminate parental rights, support system provided by members of child's extended family is relevant, and indeed often very important, in deciding whether natural parent is capable of meeting child's particular needs. D.C. Code 1981, § 16-2353(b). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Statute on termination of parental rights has no effect on whatever legal rights grandparents might have in child's future. D.C. Code 1981, § 16-2361(a). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Reconciliation of extended family is beyond focus of hearing on termination of parental rights. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Clear and convincing evidence required court, in the best interest of minor child, to deny custody to mother and award legal custody to great-grandmother; child, who had developmental disabilities, reactive attachment disorder, and symptoms of minor depression, had lived more than half her life with great-grandmother, who provided a stable and loving home for child and who was able to set appropriate limits for child which were clinically recommended and needed. In the Matter of Minor Child T.C., 131 WLR 1449 (, (Super. Ct. 2001)).

### Financial means.

It was appropriate for trial court to consider natural mother's past actions to predict her



future ability to care for her children and natural father's criminal and drug abuse history in determining whether natural parents were withholding their consents to adoptions of children by foster parents contrary to children's best interests. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

Poverty of parents, in and of itself, is not appropriate ground for determining that child's best interests would be served by termination of parental rights; neglect statute specifically excepts as basis for finding of parental neglect lack of care, control and subsistence for child due to parent's lack of financial means, and parents may not be deprived of right to rear their children on account of parents' poverty. D.C. Code 1981, §§ 16-2301(9)(B), 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

#### **Foster care.**

There is a strong public policy disfavoring the protracted retention of children in foster care, and a "wait and see" option indefinitely deferring adoption or termination of parental rights. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Trial court did not abuse its discretion, in child protection proceedings, in declining to remove children from foster care and place them with caretakers chosen by their mother, where clear and convincing evidence supported finding that such action would be against children's best interests; neither proposed caretaker wanted to adopt children, neither was prepared to assume responsibility for children given their lack of qualifications as caretakers and children's special physical, mental, and emotional needs, and neither maintained stable household. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Protracted retention of child in temporary foster care is generally not in child's best interests. In re S.C.M., 653 A.2d 398, 1995 D.C. App. LEXIS 20 (1995).

#### **Guardians ad litem.**

It was not error for trial court to refuse to have declared prospective adoptee to be a neglected child and to refuse to appoint a guardian ad litem at request of child's natural father who opposed the adoption, although he had previously given his consent. In re Adoption of D., 324 A.2d 200, 1974 D.C. App. LEXIS 258 (1974).

#### **Home environment.**

Evidence supported conclusion that children had been integrated into a stable and positive environment in home of their foster parents, which weighed in favor of waiving mother's consent to children's adoption; children had been in care of foster parents for nearly four years, and mother conceded that she was un-

able to offer such an environment to children either presently or in the near future. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

For purposes of determining whether to terminate mother's parental rights as to child, biological mother of newborn child is inherently person in child's "home environment" within meaning of statute governing consideration factor as to whether drug-related activity continued to exist in child's home environment, even though hospital has not released child to live with mother; "home environment" means, fundamentally, home base where biological parent and her child presumptively will reside, subject to temporary dislocations, until that base is severed by termination of parental rights. D.C. Code 1981, § 16-2353(b)(3A, 5). In re D.R., 673 A.2d 1259, 1996 D.C. App. LEXIS 52 (1996).

#### **In general.**

The termination of parental rights is a drastic remedy, and may be ordered only upon a showing of clear necessity. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

The fundamental due process liberty interest of natural parents in the care, custody and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Natural parents do not lose their constitutionally protected interest in the care, custody, and management of their children simply because they have not been model parents or have lost temporary custody of their children; even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life. U.S.C. Const.Amend. 14. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

Where parent-child relationship is intact, state may only intrude in that relationship in very limited circumstances in the public interest, or for protection of child; normally, such intervention does not permanently sever the parent-child relationship. In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

#### **Judicial discretion.**

Magistrate judge did not abuse his discretion in not taking testimony from 12-year-old child to ascertain child's opinion about his own best interests before terminating mother's parental rights to child; there was testimony from social workers, therapists, and foster parents from

which judge could ascertain child's opinion as to his best interests, and, while judge noted that child had expressed an interest in reunification with mother, judge weighed this against evidence that mother had been unable to even commit herself to regularly visiting child throughout case, and unable during seven-year history of case to adequately address her drug addiction or maintain household free of domestic violence. In re B.J., 917 A.2d 86, 2007 D.C. App. LEXIS 76 (2007).

Determination of whether best interests of child are served by terminating parental rights of natural parents is confided to discretion of trial court. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

In termination of parental rights' proceedings, trial court has wide latitude in applying statutory criteria to determine whether best interests of child, as shown by clear and convincing evidence, call for termination of rights. D.C. Code 1981, § 16-2353(b). In re F.N.B., 706 A.2d 28, 1998 D.C. App. LEXIS 23 (1998).

Decision whether to question child in camera to determine child's opinion was discretionary in proceeding to terminate parental rights. D.C. Code 1981, § 16-2353(b)(4). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Trial judge has wide latitude in applying statutory criteria set forth in statute governing termination of parental rights. D.C. Code 1981, § 16-2353(b). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Determination whether best interests of child warrant termination of natural mother's parental rights is confided to sound discretion of trial court. In re T.M., 665 A.2d 950, 1995 D.C. App. LEXIS 197 (1995).

Determination whether child's best interests warrant termination of parental rights is within discretion of trial court; exercise of that discretion, however, must be based upon correct legal principles. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Generally, trial judges have considerable discretion in applying statutory factors in deciding whether to enter order for termination of parental rights. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

While trial court has considerable discretion in applying statutory factors for termination of parental rights, court is not free to change the statute. D.C. Code 1981, § 16-2353(b). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Testimony by Department of Human Services officials in support proposition that termination of parental rights will enhance prospects for adoptive placement is not necessary to satisfy requirement for termination of parental

rights on ground of neglect that termination promotes timely integration of child into stable and permanent home; however, trial court has discretion to consider testimony from officials about practical plans and realistic expectations for adoptive placement of particular child, and natural parent may offer evidence of obstacles standing between child and adoptive placement. D.C. Code 1981, § 16-2353(b)(1). In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

#### **Parental relationship with other children.**

In proceeding to terminate parental rights to three-year-old son, father's conviction of indecent liberties with his seven-year-old stepdaughter should have been considered as an important factor in determining whether reunification with father was plausible goal. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Parent's propensity to abuse other children, when shown to be beyond reasonable hope of change, may amount to too great a risk to any remaining child to permit continued parental relationship with that child. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

#### **Parental unfitness, generally.**

Where trial court expressly found that child was very suitable for adoption in view of his age and health characteristics, no more was required given unassailable finding that the mother would not be a fit guardian in the near future, and Department of Human Services need not substantiate in every case, by reference to past or current experience, the realistic prospects for adoption that termination would advance. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Mother's alleged borderline mental retardation did not entitle her to additional or different reunification services in connection with child protection and termination of parental rights proceedings, in absence of any statutorily-required evidence supporting diagnosis of mental retardation or any request by mother for special services due to limitations in her intellectual capacity. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Parent who is convicted child molester with criminal background, homicidal ideation, and record of threatening conduct is not "fit," in ordinary everyday sense of that word. D.C. Code 1981, § 16-2353. In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Even if father was not "unfit," it was not in best interest of child, who was fully integrated into stable foster home, to be reunited with father who, according to court-appointed experts, suffered from severe personality disorder which had led him to threaten people, to at-



tempt suicide, to commit numerous criminal acts, including sex offense against step daughter, and to blame virtually everybody but himself for his troubles. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Clear and convincing evidence, in contested child custody proceeding, established that mother was unable or unfit to provide the stability and continuity that six-year-old child needed and that it would be detrimental to child's emotional and psychological well being to uproot her from her great-grandmother, with whom she had lived for three years, and to place her with mother, who denied and minimized her limitations as a parent. In the Matter of Minor Child T.C., 131 WLR 1449 (, (Super. Ct. 2001)).

Clear and convincing evidence in contested child custody proceeding, including the testimony of three psychologists, established that it would be detrimental to minor child's mental, emotional, and possibly physical health to be returned to custody of mother who was unable to function on her own without the assistance and intervention of others. In the Matter of Minor Child T.C., 131 WLR 1449 (, (Super. Ct. 2001)).

Clear and convincing evidence established that mother was unable or unfit to facilitate interaction between minor child who was subject of contested custody proceeding and her sister or other family members in a way that would not have been detrimental to minor child. In the Matter of Minor Child T.C., 131 WLR 1449 (, (Super. Ct. 2001)).

An order granting an adoption did not constitute a separate and independent finding that the parental rights of the natural parents were terminated pursuant to this section. In re J.A., 119 WLR 941 (Super. Ct. 1991).

Superior Court may terminate the parent-child relationship of a putative father in a termination of parental rights proceeding where the father has been given notice of the pending and past proceedings and has been represented by counsel at all stages in the neglect and termination proceedings, where the child has been adjudicated a neglected child during the neglect phase of said proceedings, but the father has not been formally found to have neglected his child, or been found unfit to care for his child, during the neglect proceedings. In re Gary H., 115 WLR 1201 (Super. Ct. 1987).

#### **Presumptions and burden of proof.**

Legal touchstone in any proceeding to terminate parental rights is the best interest of the child, and that interest is controlling. D.C. Code 1981, § 16-2353(a). In re A.B.E., 564 A.2d 751, 1989 D.C. App. LEXIS 191 (1989).

Whatever strength of state interest necessary to justify minor or moderate interference with relationship between children and noncustodial parent, permanent termination of their bond can be justified only by promotion of compelling objective. U.S. Const. Amends. 5, 14. *Franz v. U.S.*, 707 F.2d 582, 1983 U.S. App. LEXIS 28130 (C.A.D.C. 1983).

Government met its burden of overcoming the presumption in favor of placement of child with maternal cousin, who was the choice of custodian of mother, upon termination of her parental rights; cousin missed visits with child, often canceling at the last minute, child appeared disinterested in cousin during their visits, there was inadequate space for a fifth child in cousin's apartment, cousin was unable to provide any documentation of his salary despite his claim that he earned approximately \$1200 per month, and background check revealed prior convictions for drug possession and possession of a firearm. In re A.B., 955 A.2d 161, 2008 D.C. App. LEXIS 375 (2008).

Parental rights may not be terminated solely because of poverty, ill-health, or lack of education or sophistication, but only upon a high showing that such a drastic measure is necessary in order to protect the best interests of the child. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Notwithstanding the presumption in favor of the birth parent, a parent's rights may and must be overridden when such a drastic measure is necessary in order to protect the best interests of the child. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

A child's best interests are presumptively served by being with a parent, providing that the parent is not unfit; this holds true even where, in a contest between a biological parent and a non-parent, the latter is in more favorable financial circumstances. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court was entitled to infer, from father's presence and silence at hearing on termination of his parental rights, that his testimony would have been unfavorable had he chosen to testify, where father had peculiar knowledge concerning nature of his relationship with child, his testimony would have aided trial court in assessing statutory factors relevant to termination as they pertained to him, and controlling legal principle was best interests of the subject child. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Party seeking termination of parental rights must provide evidence that will produce in mind of the trier of fact a firm belief or conviction that termination of parental rights is in fact in child's best interest. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Although neglect proceeding is remedial and focuses on situation of child rather than parent,

the rights of parent are not to be overridden lightly. In re AK. V., 747 A.2d 570, 2000 D.C. App. LEXIS 66 (2000).

Decision to terminate parental rights is controlled by the best interests of the child standard. In re J.M.C., 741 A.2d 418, 1999 D.C. App. LEXIS 275 (1999).

In adoption cases, and in proceedings to terminate parental rights, paramount consideration is the best interest of the child; trial court, as *parens patriae*, has obligation to protect child's welfare. In re T.W., 732 A.2d 254, 1999 D.C. App. LEXIS 143 (1999).

Party seeking termination of parental rights must provide evidence that will produce in mind of trier of fact a firm belief or conviction that termination of parental rights is in best interest of child. D.C. Code 1981, §§ 16-2353(a), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

It is generally contrary to a child's best interest to take a child out of a loving home, when she has lived at that home for a substantial period of time as a result of her biological parents' inability or unwillingness to care for her. In re An.C., 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

Legal touchstone in any proceeding to terminate parental rights is the best interest of the child, and that interest is controlling. In re C.V., 719 A.2d 1246, 1998 D.C. App. LEXIS 213 (1998).

In termination of parental rights' proceedings, unless it is established that parent is not competent to make such a decision, child and natural parents share vital interest in preventing erroneous termination of their natural relationship, and, therefore, parent's choice of fit custodian for child must be given weighty consideration which can be overcome only by showing, by clear and convincing evidence, that custodial arrangement and preservation of parent-child relationship is clearly contrary to child's best interest. U.S. Const. Amend. 14; D.C. Code 1981, § 16-2353(b). In re F.N.B., 706 A.2d 28, 1998 D.C. App. LEXIS 23 (1998).

Burden is on moving party to show that termination of parental rights would be in best interests of child. D.C. Code 1981, § 16-2353(a). In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Finding by trial court that termination of parental rights is in best interests of child must be based on clear and convincing evidence. D.C. Code 1981, §§ 16-2353(a), 16-2359(f). In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Termination of parental rights is drastic remedy, which should be ordered only upon showing of clear necessity. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Trial court may terminate parental rights when it finds from evidence presented, after

giving due consideration to interests of all parties, that termination is in best interests of child. D.C. Code 1981, § 16-2353(a). In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

It is essential to establish the relationship of father and son or daughter before terminating that relationship through a termination of parental rights (TPR) proceeding. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

In custody contest between parent and nonparent, presumption is that child's best interests will be served by being with the parent, provided that parent is not unfit; this holds true even when nonparent is in more favorable financial circumstances. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

In proceeding to terminate parental rights, decisive consideration is best interest of the child. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Termination of parental rights is a drastic remedy to be ordered only upon showing of clear necessity. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Parent-child relationship may be terminated only based on clear and convincing evidence that termination is in best interests of child. D.C. Code 1981, § 16-2353(a). In re D.G., 583 A.2d 160, 1990 D.C. App. LEXIS 295 (1990).

When State seeks termination of parental rights, paramount consideration is best interests of child. D.C. Code 1981, § 16-2353(a). In re D.G., 583 A.2d 160, 1990 D.C. App. LEXIS 295 (1990).

Burden is on moving party to show that termination of parental rights would be in the best interest of the child. D.C. Code 1981, § 16-2353(a). In re A.B.E., 564 A.2d 751, 1989 D.C. App. LEXIS 191 (1989).

Issue in termination proceeding is not one of attaching blame or punishing the natural parent, but of protecting the best interest of the child. D.C. Code 1981, § 16-2353(a). In re A.B.E., 564 A.2d 751, 1989 D.C. App. LEXIS 191 (1989).

Clear and convincing evidence supported termination of parental rights of noncustodial natural father of child who was born with fetal alcohol syndrome and fetal hydatoin syndrome, resulting in special needs for occupational and physical therapy; trial court had determined that father was unable to meet child's special needs and that appropriate adoptive family, capable of providing the structure, consistency, support, and understanding necessary for child's development, would be substantially harder to find given legal risk posed by father's residual parental rights. D.C. Code



1981, § 16-2353(a, b). Appeal of U.S.W., 541 A.2d 625, 1988 D.C. App. LEXIS 83 (1988).

Clear and convincing evidence that termination of parent-child relationship is in best interest of child is such evidence as will produce in the mind of trier of fact a firm belief or conviction as to facts sought to be established. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

While trial judge in termination of parental rights proceedings did not specify standard of proof which he applied, clear and convincing evidence was presented to support granting of termination motion. D.C. Code 1978 Supp. §§ 16-2351 et seq., 16-2353. In re L., 434 A.2d 1004, 1981 D.C. App. LEXIS 349 (1981).

### **Responsibility of public bodies.**

Failure of child protective service agency in its responsibility to make efforts to reunify the family does not necessarily preclude the termination of parental rights. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

While agencies have an obligation to provide services and facilitate family reunification, there is no statutory requirement that such agency action is a condition precedent to the commencement of a termination of parental rights proceeding, since the overriding consideration is the best interests of the child. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Trial court, in determining whether parents have withheld their consent to child's adoption contrary to child's best interests, must weigh the same factors as those weighed in a termination of parental rights proceeding. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Failure of Department of Human Services (DHS) to facilitate reunification efforts between parent and child cannot defeat the issuance of termination of parental rights order. In re J.M.C., 741 A.2d 418, 1999 D.C. App. LEXIS 275 (1999).

Effort of the public custodial agency to reintegrate the family is a relevant factor in the decision-making process in a proceeding to terminate parental rights; however, termination of parental rights is not precluded solely because the custodial agency has failed in its responsibility to make efforts to reunify the family. In re J.M.C., 741 A.2d 418, 1999 D.C. App. LEXIS 275 (1999).

Department of Human Services (DHS) failed to make adequate efforts to reunify mother and father with children after removal of children from home for deplorable living conditions observed by witnesses on day that children's grandmother died; in report prepared in connection with dispositional hearing scheduled more than one year after children were removed, DHS noted that it had not called par-

ents until recently. In re T.G., 684 A.2d 786, 1996 D.C. App. LEXIS 238 (1996).

Failure of Department of Human Services to assist parents in securing training necessary to enable them to provide for physical, mental and emotional needs of child in city where parents lived pursuant to applicable interstate compact or to conduct home study of parents' home was relevant factor which should have been considered by trial court in determining whether termination of parental rights of natural parents of minor child would be in best interests of child; child's chance for realizing permanent home might have been improved significantly, not by terminating parental rights in hopes of adoptive placement, but by meaningful intervention of social services agency in lives of existing family. D.C. Code 1981, § 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Effort to reintegrate family is relevant factor in decision-making process in proceeding to terminate parental rights; thus, action or inaction of agency having custody of child is pertinent. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Performance of Department of Human Services cannot be dispositive in determining whether terminating parental rights is in best interests of child; child cannot be punished for alleged wrongs of bureaucracy. In re T.M., 665 A.2d 950, 1995 D.C. App. LEXIS 197 (1995).

Any failure of Department of Human Services (DHS) to provide reunification services to father did not warrant denial of motion to terminate father's parental rights and application to allow foster mother to adopt child, where adoption was demonstrably in child's best interests; child could not be punished for alleged wrongs of the bureaucracy. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

### **Review.**

On appeal of termination of parental rights, Court of Appeals must be satisfied that the possibility of an erroneous judgment does not lie in equipoise between the two sides. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

A trial court's decision to terminate parental rights must be supported by clear and convincing evidence, and may be reversed only for an abuse of discretion. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Trial judge's failure to expressly apply the criteria set forth in statute regarding termination of parental right in his judgment approving adoption of child over mother's objection did not warrant remand given the emphatic character of the judge's findings "beyond a reasonable doubt" rather than the required "clear and convincing evidence" and the compelling evi-

dence that the mother offered no realistic alternative to adoption. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Upon reviewing a trial court's determination to terminate parental rights, an appellate court may not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Court of Appeals must determine whether the trial court's decision to terminate a parent's rights is supported by clear and convincing evidence, and it must be satisfied that the possibility of an erroneous judgment does not lie in equipoise between the two sides. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court's denial of mother's motion for reconsideration of order terminating her parental rights cured defect in her appeal occasioned by her having filed notice of appeal prior to ruling on motion for reconsideration. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Mother could not argue, for first time on appeal from termination of her parental rights, that agency failed to provide adequate services geared toward special needs arising out of her borderline mental retardation. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

A trial court's weighing of statutory factors in determining the best interests of the child in a termination of parental rights proceeding is reviewed for abuse of discretion. In re P.S., 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

In reviewing trial court's termination of parental rights decision, appellate court checks to be sure that trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors, and no improper factor. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

In termination of parental rights case, trial court's determination of where best interest of the child lies may be reversed only for abuse of discretion. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Application of the best interests of the child standard in termination of parental rights case presents one of the heaviest burdens that can be placed on a trial judge, and in reviewing this difficult decision, Court of Appeals will reverse only for an abuse of discretion. In re J.M.C., 741 A.2d 418, 1999 D.C. App. LEXIS 275 (1999).

Trial court erred in failing to give requisite "weighty consideration" to natural parents' preference, expressed in proceeding to terminate parental rights, that child be placed in custody of relative, and thus, remand was required to permit further exploration into parents' preference. D.C. Code 1981, §§ 16-2353(a,

b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

In reviewing trial court's decision terminating parental rights of natural parents, Court of Appeals checks to be sure that trial court has exercised its discretion within range of permissible alternatives, based on all relevant factors, and no improper factor. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court should have more explicitly considered possibility that father with history of drug abuse and instability might have become suitable parent within foreseeable future, and that in meantime child might have remained in foster care, before court terminated father's parental rights, and thus, remand was warranted, where evidence including father's employment suggested, at least, that father might have been on road to becoming fit parent, and although presence of mother with history of drug abuse in home was cause for concern, it was not shown that mother would be living there permanently. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court applied correct standard of proof, in deciding whether to terminate father's parental rights; court order enumerated statutory factors it considered, made detailed factual findings, applied statutory factors to those findings, and explicitly declared that it found by clear and convincing evidence that termination of parental rights was in best interest of child. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial judge's failure to solicit testimony from social workers concerning child's wishes and opinions was not plain error in proceeding to terminate parental rights. D.C. Code 1981, § 16-2353(b)(4). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Trial judge did not abuse her discretion in parental rights termination case when she refused to interview six-year-old child in camera to determine child's opinion; judge believed that such interview would place undue pressure on child and would risk infliction of significant emotional harm, and that she lacked necessary training and skills to conduct such an interview without imperiling child's psychological well-being. D.C. Code 1981, § 16-2353(b)(4). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Trial judge's failure to make determinations under statutory factor of whether drug-related activity continued to exist in child's home environment, because of judge's mistaken understanding of meaning of "home environment," did not necessitate remand on appeal of order terminating mother's parental rights as to child, since judge's consideration of mother's



drug history as relevant to other statutory factors, combined with other considerations judge found important, such as mother's near-total failure to develop relationship with child since birth, firmly supported termination decision, and judge's findings and conclusions provided little indication that she relied on evidence of present drug abuse by mother at all. D.C. Code 1981, § 16-2353(b), (b)(5). In re D.R., 673 A.2d 1259, 1996 D.C. App. LEXIS 52 (1996).

There was no abuse of discretion in trial court's decision to terminate parental rights of father and mother regarding their daughters; guardian ad litem provided evidence showing inappropriate and selfish behavior on part of mother during visits which upset and dismayed children, there was evidence that parents often failed to attend scheduled visits, parents had failed to take advantage of counseling or job training to enable them to care for daughters, neither parent presented any plans by which they might be able to take care of children at any point in future, and adoption recruiter testified that children were adoptable and that chances of adoption would be increased if parental rights were terminated. D.C. Code 1981, § 16-2353(b). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Court of Appeals will reverse trial court's decision that termination of parental rights is in best interests of child only upon showing of abuse of discretion. D.C. Code 1981, § 16-2353(b). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Trial court's finding in support of denial of motion to terminate parental rights, that there was no significant disorder of father's personality, was clearly erroneous, in light of expert testimony that father suffered from severe personality disorder and trial court's other findings regarding father's history of criminal activity, emotional disturbance, and threatening and antisocial behavior. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Remand of motion to terminate parental rights and application for adoption to trial court, which had misapprehended applicable legal principles, for further findings would serve no useful purpose in light of clear weight of the evidence and danger to the child; accordingly, case would be remanded with directions to grant application and motion, notwithstanding rarity with which such relief should be granted by appellate court. D.C. Code 1981,

§ 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

Court of Appeals reviews trial court's judgment for termination of parental rights only for abuse of discretion. D.C. Code 1981, § 16-2353(a). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Trial court did not abuse its discretion in termination of parental rights proceeding in precluding child from answering questions about adoption; judge of trial court did not bar all testimony by the child, but did let her answer questions as to how she liked her visit with her mother and how she felt about her mother, court particularly believed the child at issue could be harmed by sense of having had to make final choice herself, and judge had ample testimony before him of child's desire for adoption and ambivalence about renewed unification with her mother. D.C. Code 1981, §§ 16-2320(g), 16-2353(a), (b)(4), 16-2359(f). In re T.W., 623 A.2d 116, 1993 D.C. App. LEXIS 87 (1993).

Trial court, when determining whether to terminate mother's parental rights, abused its discretion by failing to make findings on mother's mental, physical, and emotional health, as required by statute; court ignored uncontroverted testimony that mother suffered significant mental and emotional problems, had recently been arrested for solicitation for prostitution, and had expressed no interest in caring for or even visiting her child. D.C. Code 1981, § 16-2353(b)(2). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Trial court, when determining whether to terminate parental rights of teenage mother, improperly substituted, in effect, the grandparents for teenage mother, and improperly considered merits of termination proceeding as it related to grandparent-child relationship as opposed to mother-child relationship. D.C. Code 1981, § 16-2353(b)(3). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Scope of review of trial court's order terminating parental rights of noncustodial parent is limited to whether decision is supported by clear and convincing evidence in record; to affirm trial court's decision, Court of Appeals must be satisfied that there is sufficient evidence such that possibility of erroneous judgment does not lie in equipoise between two sides. D.C. Code 1981, § 16-2353(b). In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

In reviewing trial court's order terminating parental rights of noncustodial parent, trial court's determination of best interest of child may be reversed only for abuse of discretion. D.C. Code 1981, § 16-2353(b). In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

In reviewing trial court's termination of parental rights of noncustodial parents, reviewing court must determine whether trial court's finding is supported by clear and convincing evidence on the record. D.C. Code 1981, § 16-2353(a). Appeal of U.S.W., 541 A.2d 625, 1988 D.C. App. LEXIS 83 (1988).

Trial court, in terminating parental rights, did not impermissibly compare the natural parent and the foster parent where it first determined that natural mother was not able to satisfactorily mother the child and that it was in the best interest of child to find her a permanent home, and only then turned to the current placement and found that the current preadoptive home was a favorable environment. D.C. Code 1981, § 16-2353(b). In re C.O.W., 519 A.2d 711, 1987 D.C. App. LEXIS 273 (1987).

Whether Department of Human Services had met its burden of proof in action involuntarily terminating parental rights was not within province of Court of Appeals. D.C. Code 1981, § 16-2353. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

On appeal of involuntary termination of parental rights, Court of Appeals must satisfy concern that there is sufficient record evidence such that possibility of an erroneous judgment did not lie in equipoise between the two sides, using the preponderance standard; nevertheless, it need not require evidence be so compelling so as to exclude as nearly as possible the likelihood of a decision that erroneously terminates parental rights. D.C. Code 1981, § 16-2353. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Although evidence indicated father had a close relationship with child during periods of his presence with her and this could reflect a reasonable doubt whether the involuntary termination of his parental rights was in the best interests of the child, the Court of Appeals could not permit this close issue to be definitively decided since risk of factual error fell within range of tolerable potential error. D.C. Code 1981, § 16-2353(b)(3). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Involuntary termination of parental rights was not reversible error, where evidence showed continuity and stability of care were lacking in father's custody of child but not under care of foster parents, child's physical and emotional health would best be served by termination of rights, quality of interaction with natural parents was good, but parents took advantage of visitation rights very infrequently, while child's interaction with foster family was very good, and child expressed a desire to stay with foster parents. D.C. Code 1981, § 16-2353(b). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Involuntary termination of parental rights was not error, where child testified she did not want to live with her natural father again but that she wanted to live with her foster parents. D.C. Code 1981, § 16-2353(b)(4). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

Action of the Juvenile Court in permanently depriving natural mother of the custody of her infant child and in awarding it to the welfare department was not, under the record, an abuse of discretion. In re Lem, 164 A.2d 345, 1960 D.C. App. LEXIS 258 (Cr.App. 1960).

Where parents withdrew their appeal from an order granting an adoption to another couple so that the matter could be returned to the Trial Court for withdrawal of the adoption petition and the adjudication of a new motion for termination of parental rights the Court would not hold that the order granting the adoption independently terminated the A's parental rights because the A's would have lost their rights to appeal from the order. In re J.A., 119 WLR 941 (Super. Ct. 1991).

#### **Self-incrimination.**

Trial court did not violate mother's Fifth Amendment privilege against self-incrimination when it allowed child's guardian ad litem to call mother as adverse witness and in allowing inquiry into mother's illegal drug use in parental rights termination proceeding, where mother did not object to particular questions about her drug use on such grounds. U.S. Const.Amend. 5; D.C. Code 1981, § 16-2353(b). In re D.R., 673 A.2d 1259, 1996 D.C. App. LEXIS 52 (1996).

#### **Sufficiency of evidence.**

Evidence supported conclusion that natural parents were currently drug free, such that factor of whether there was continued drug use in children's home environment should not be allocated any weight in determining whether natural parents were withholding their consents to adoptions of children by foster parents contrary to children's best interests. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

Evidence supported conclusion that quality of interactions between parties favored foster parents, for purposes of determining whether natural parents were withholding their consents to adoptions of children by foster parents contrary to children's best interests; foster parents' home exuded a sense of warmth, children were happy living there, and they affectionately referred to foster parents as "mom" and "dad," and, while quality of interactions between children and their parents had improved, natural father admitted that his relationship with children had been fragmentary in the past. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).



Evidence supported conclusion that there were no compelling physical or mental health issues regarding parties involved, for purposes of determining whether natural parents were withholding their consents to adoptions of children by foster parents contrary to children's best interests; while natural mother had problems with her knees and natural father suffered some physical health problems, there was no indication that these conditions had any impact on their ability to parent, and foster parents had met all of the children's physical, mental, and emotional needs. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

Evidence supported finding that adoption of children by their foster parents satisfied children's need for continuity of care and stability and for timely integration into stable and permanent home, for purposes of determining whether natural parents were withholding their consents to adoptions contrary to children's best interests; foster parents and children operated as a family and attended church together, went vacationing, and attended family functions, foster parents had been placement resources for children since the first time they were removed from mother's home, and they had been the one stable factor in children's lives ever since, and natural parents had not been able to provide children with same type of stability and permanence. In re D.H., 917 A.2d 112, 2007 D.C. App. LEXIS 85 (2007).

Clear and convincing evidence supported finding that termination of mother's parental rights was in child's best interest; child had not lived with mother for eight years, mother had very limited in-person contact with child over the past ten years, mother had not demonstrated any real commitment or interest in being reunited with the child, child would be available for adoption after he completed his treatment and child protective service agency was optimistic about his prospects for being adopted, child was very troubled, and child had resided in institutional placements for almost three years. In re C.M., 916 A.2d 169, 2007 D.C. App. LEXIS 14 (2007).

Evidence was sufficient to support trial court's finding that termination of mother's parental rights was warranted; mother initially abandoned her child at the age of two months, she failed to comply with the terms of a court order that required her to pay \$150 per month in child support and instead relied on child's paternal great-aunt to provide total emotional and financial support for child on a daily basis for almost seven years, and, after child was adjudged neglected by mother, she failed to comply with substantive terms of the case plan except for actively participating in weekly supervised visitation with child. In re A.C.G., 894 A.2d 436, 2006 D.C. App. LEXIS 135 (2006).

Evidence supported conclusion that quality of interaction and relationship between children and their foster parents was positive, constructive, and healthy, which weighed in favor of waiving mother's consent to children's adoption; children had formed similar positive bonds with foster parents' natural children, and child and family services agency caseworkers uniformly testified as to positive relationship between children and foster parents, and to children's frustration resulting from mother's habitual lateness for visits with them, as well as to mother's history of missed visits. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Evidence supported finding that maternal aunt's adoption of nephew, after the trial court waived mother's consent to adoption, was in nephew's best interests; nephew had resided with aunt for six years, mother did not have a job, she had an extensive history of substance abuse and mental illness, she tested positive for cocaine after she completed a drug program, and she failed to comply with court ordered drug testing. In re H.B., 855 A.2d 1091, 2004 D.C. App. LEXIS 403 (2004).

The quality of the interaction and interrelationship of the child with great aunt, who had been taking care of child since his removal from biological mother's home, supported adoption by great aunt over biological mother's objection, where the quality of interaction between child and his mother after he was removed from the mother's home was favorable but fragmentary. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Child's physical, mental, and emotional needs supported adoption, over biological mother's objection, by great aunt, who had been taking care of child since his removal from mother's home; evidence indicated child had been seriously abused in biological mother's home, mother was intellectually limited, lacked parenting skills, contributed none of her earnings to child's support, and child had spent almost his entire life in the care of great-aunt. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Child's need for continuity of care and for a timely integration into a stable and permanent home supported adoption, over biological mother's objection, by great aunt, who had been taking care of child since his removal from mother's home, where child had lived with mother for only seven months and mother had made virtually no effort or progress towards reintegrating her son into her home. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

Trial court did not abuse its discretion, in child protection proceedings, in concluding that termination of mother's parental rights was warranted, despite children's apparent attach-

ment to mother and despite mother's contention that older children's ages and special needs made them unadoptable, where mother was unfit parent and children were found to be attractive, friendly, affectionate, and in good relationships with their respective foster parents. In re Ja. J., 814 A.2d 923, 2002 D.C. App. LEXIS 797 (2002).

Clear and convincing evidence in child protection proceedings supported termination of mother's parental rights to all four of her children; three youngest children had been in foster care for almost their entire lives, were doing well in their current placements, and would be adopted together, oldest child was doing well in foster care and did not want to see mother, mother had failed to provide any financial assistance toward maintenance of any of the children, and mother was unemployed and living with her current boyfriend and his mother. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Evidence that child's father was aware of child's birth was sufficient to support finding that father failed to develop relationship with child despite having had opportunity to do so, despite father's failure to testify at termination hearing; father's mother testified on father's behalf at hearing, stating that she was child's grandmother and that her son was child's father, and court was entitled to infer from father's presence and silence that his testimony would have been unfavorable had he chosen to testify. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Trial court's decision to terminate parental rights must be supported by clear and convincing evidence that termination is in child's best interest. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Evidence warranted termination of parents' parental rights; at time that children were brought into neglect system, mother and children were living in shelter, mother acknowledged that she was unable to care for children, she failed to take necessary steps to foster reunification, she refused counseling to address her continuing relationships with abusive men, father was never able to secure employment and financially support children or provide stable and permanent home for them, and he failed to visit children for significant periods of time. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Substantial evidence supported termination of mother's parental rights; upon child's birth, mother did not take custody of child, who was placed in shelter care at a boarder baby facility, mother was later in a drug treatment program and unable to provide care and shelter for child, mother had never asked for visits with the child, and child's medical and emotional needs were being met by the foster mother. D.C. Code

1981, §§ 16-2353, 17-305(a). In re C.V., 719 A.2d 1246, 1998 D.C. App. LEXIS 213 (1998).

In termination of parental rights' proceeding, mother was properly found to be incapable of caring for daughter, where mother had substance abuse problem, twice attempted suicide, ceased regular visitation with daughter, and in light of psychological assessment concluding that mother did not possess physical, mental, or emotional resources necessary to care for daughter. D.C. Code 1981, §§ 16-2301(9)(B, C), 16-2353(b). In re F.N.B., 706 A.2d 28, 1998 D.C. App. LEXIS 23 (1998).

Evidence was sufficient in parental rights termination proceeding to support finding that child's foster mother and foster mother's husband were physically, mentally, and emotionally healthy; foster mother testified that her health, husband's health, and health of others in their home was good, and that she was prepared to support child emotionally for the rest of child's life. D.C. Code 1981, § 16-2353(b)(2). In re D.R., 673 A.2d 1259, 1996 D.C. App. LEXIS 52 (1996).

Need of minor child with no prospects for adoption in near future for continuity of care was not better served by termination of her natural parents' parental rights, despite evidence of parents' past substance abuse problems; parents had been in drug treatment for some time prior to termination of parental rights (TPR) hearing, had home, had availed themselves of social services in their home state, had started special training needed for child's care, and had expressed their desire to have their child with them. D.C. Code 1981, § 16-2353. In re A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Testimony of sons, ages 12 and 8, was not required for termination of mother's parental rights; record was replete with references with respect to boys' opinions from statements made to others concerning relationship with mother and foster parents, and judge made findings about boys' opinions in discussion of psychologist's testimony. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Record supported trial court's order terminating natural father's parental rights to five-year-old child; evidence showed that child's emotional needs had been met successfully by foster parents as result of which he was healthy and well-adjusted, and that father missed only visit he ever scheduled with child and even failed to participate personally in termination proceedings. D.C. Code 1981, § 16-2353(b). In re A.C., 597 A.2d 920, 1991 D.C. App. LEXIS 278 (1991).

While mental illness was not itself adequate ground for termination of parental rights, trial court could properly consider effect of father's mental condition on welfare of children in de-



termining whether to terminate father's parental rights; there was ample evidence that father was emotionally unstable and incapable of relating meaningfully to his children and that his condition had showed no improvement during almost four-year period that children were in protective custody. D.C. Code 1981, § 16-2353(b). E.C. v. District of Columbia, 589 A.2d 1245, 1991 D.C. App. LEXIS 99 (1991).

Involuntary termination of mother's parental rights was proper, where record firmly established that she abandoned child at child's age five, she had not assumed care or custody of child since, she exercised visitation rights only six times since foster care began, she appeared to have an alcohol problem, she had not taken affirmative steps to address personal and professional problems which affected her ability as a parent, her interaction with child had been observed as not totally positive, and she was not child's expressed preference. D.C. Code 1981, § 16-2353. In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

In proceeding involuntarily terminating parental rights, evidence supported finding that child's need for continuity of care and caretakers and integration into stable and permanent home environment was not supplied by father. D.C. Code 1981, § 16-2353(b)(1). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

In proceeding involuntarily terminating parental rights, testimony establishing child's mental and emotional health considerably improved once she was placed in foster home supported finding her physical, mental, and emotional needs were not met by father. D.C. Code 1981, § 16-2353(b)(2). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

#### **Validity.**

Statute under which all persons involved

with the child are to be considered in relationship to the best interests of the child, in deciding whether to terminate parental rights, does not violate due process on theory that it invites comparison between a natural parent and foster family and impermissible basing of termination on economic and cultural factors. D.C. Code 1981, § 16-2353(b); U.S.C. Const.Amend. 5. In re C.O.W., 519 A.2d 711, 1987 D.C. App. LEXIS 273 (1987).

#### **Wait and see.**

There is a strong public policy disfavoring the protracted retention of children in foster care, and a "wait and see" option indefinitely deferring adoption or termination of parental rights, leaving a child in "legal limbo" for the foreseeable future, is inappropriate where a birth parent's ability to reunite with the child within a reasonable time is entirely speculative. In re J.G., 831 A.2d 992, 2003 D.C. App. LEXIS 558 (2003).

"Wait and see" option, postponing both reunification and termination of parental rights, was not appropriate with regard to child who was fully integrated into prospective adoptive home and whose natural father's future ability to reunite with child was at best speculative; court would not leave child in legal limbo waiting for an event that likely would never happen. D.C. Code 1981 § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

It may be in best interests of child to "wait and see" and deny motion to terminate rights of parent whose unfitness is temporary. D.C. Code 1981, § 16-2353(b). In re L.L., 653 A.2d 873, 1995 D.C. App. LEXIS 34 (1995).

## **§ 16-2354. Motions.**

(a) Except as provided by subsection (b)(3) of this section, a motion for the termination of the parent and child relationship may be filed by the District government or by the child through his or her legal representative.

(b) A motion for the termination of the parent and child relationship:

(1) May be filed when the child who is the subject of the motion has been adjudicated neglected at least 6 months prior to the filing of the motion and the child is in the court-ordered custody of a department, agency, institution, or person other than the parent;

(2) May be filed immediately when, despite reasonable efforts, the parent could not be located for the fact finding hearing and during the period from the child's removal from the home to the fact finding hearing; and

(3) Except as provided in subsections (c) and (g) of this section, shall be filed by the District government if:

(A) The child has been in court-ordered custody under the responsibility of the District for 15 of the most recent 22 months;

(B) The Division has determined the child to be abandoned;

(C) A court of competent jurisdiction has determined that the parent has:

(i) Committed murder of a child sibling or another child;

(ii) Committed voluntary manslaughter of a child sibling or another child;

(iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(iv) Committed a felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child; or

(D) The Division has determined the child to be subject to intentional and severe mental abuse.

(c) The District government shall seek to be joined as a party to a motion filed by the child if any of the factors in subsection (b)(3) of this section apply and the child has filed an adoption petition.

(d) A motion for termination of the parent and child relationship shall include but not be limited to:

(1) The name, sex, date and place of birth, and current placement of the child;

(2) The name and title of the petitioner;

(3) The name and address of the child's parent;

(4) A plain and concise statement of the facts and opinions on which the termination of the parent and child relationship is sought;

(5) A specification as to the health of the child;

(6) A statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

(7) A statement as to the various efforts taken by the moving party to locate the parent of the child.

(e) When any facts required pursuant to subsection (d) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship.

(f) The Agency shall take steps to identify, recruit, process, and approve a qualified family for an adoption concurrently with the District government's filing of the motion or its joinder to the petition.

(g) The District government need not file a motion if the Agency determines and has documented in the case plan that:

(1) The child is being cared for by an approved kinship caregiver and adoption is not the child's permanency plan;

(2) A compelling reason for determining that filing such a motion would not be in the best interest of the child; or

(3) The District has not offered or provided to the family of the child, consistent with the time period in the case plan, such services as the District



deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child pursuant to § 4-1301.09a.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(ii), 45 DCR 745; June 27, 2000, D.C. Law 13-136, § 301(g), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(9), 48 DCR 2043.)

**Prior Codifications.** — 1981 Ed., § 16-2354.

1973 Ed., § 16-2354.

**Effect of amendments.** — D.C. Law 13-136 rewrote this section, which previously read:

"(a) A motion for the termination of the parent and child relationship may be filed by the District of Columbia government or by the child through his or her legal representative.

"(b) A motion for the termination of the parent and child relationship may be filed only when the child who is the subject of the motion has been adjudicated neglected at least six (6) months prior to the filing of the motion and the child is in the court-ordered custody of a department, agency, institution or person other than the parent; except that the motion for termination may be filed immediately—

"(1) upon an adjudication that the child was abandoned; or

"(2) when, despite reasonable efforts, the parent could not be located for the factfinding hearing and during the three (3) months prior to the hearing.

"(c) A motion for the termination of the parent and child relationship shall include but not be limited to:

"(1) the name, sex, date and place of birth, and current placement of the child;

"(2) the name and title of the petitioner;

"(3) the name and address of the child's parent;

"(4) a plain and concise statement of the facts and opinions on which the termination of the parent and child relationship is sought;

"(5) a specification as to the health of the child;

"(6) a statement as to the general prospects for or the barriers, if any, to the adoption of the child; and

"(7) a statement as to the various efforts taken by the moving party to locate the parent of the child.

"(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, for good cause shown, the judge may direct the filing of a bill of particulars to inform the

moving party of the precise nature of the allegations contained in the motion for the termination of the parent and child relationship."

D.C. Law 13-277 substituted "Agency" for "Department of Human Services" in subsecs. (f) and (g).

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 301(f) of Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Emergency legislation.** — For temporary (90-day) amendment of section, see § 301(f) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) amendment of section, see § 301(f) of the Adoption and Safe Families Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-178, November 2, 1999, 46 DCR 9714).

For temporary (90-day) amendment of section, see § 301(f) of the Adoption and Safe Families Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-240, January 11, 2000, 47 DCR 556).

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 13-136.** — Law 13-136, the "Adoption and Safe Families Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

**Legislative history of Law 13-277.** — For D.C. Law 13-277, see notes following § 16-2301.

## CASE NOTES

## ANALYSIS

Court-ordered custody.  
 Date of adjudication.  
 Due process.  
 Guardian ad litem.  
 Jurisdiction.  
 Review.

**Court-ordered custody.**

Neglected children, who had been placed under shelter care, had been placed in "court-ordered custody," as required for termination of mother's parental rights. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

**Date of adjudication.**

Six-month waiting period for filing petition to terminate mother's parental rights had to be calculated from date of adjudication of neglect, rather than date of disposition hearing. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

For purposes of bringing petition to terminate parental rights of parents of neglected children, adjudication of neglect occurred when trial judge's oral findings were entered and not on later date when judge formally issued written findings of fact. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

**Due process.**

Permitting court-appointed guardian ad litem to file motion to terminate parental rights following adjudication of neglect does not violate due process; once child has been adjudicated neglected, right of family privacy and integrity has already been subordinated to that extent to District's right and duty to protect mother and children through judicial determinations of their interest and, at that point, no valid right to family integrity is breached merely by allowing guardian ad litem, who may be uniquely familiar with facts of case and parties, to initiate and pursue termination.

D.C. Code 1981, § 16-2354(a); U.S.C. Const. Amends. 5, 14. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

Due process does not require that a termination of parental rights proceeding be initiated and prosecuted by a government attorney. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

**Guardian ad litem.**

The filing of motions to terminate parental rights, and the prosecution thereof, by a private attorney acting as guardian ad litem, without the assistance and participation of the Corporation Counsel, or by one or more of its assistant Corporation Counsels, was in accord with the statutory provisions, and the Department of Human Services, was in substance, a party to the proceeding. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

Council's action in approving the increase in compensation level to \$1,000 for termination of parental rights proceedings was a ratification of the role that guardians ad litem perform in termination of parental rights proceedings. In re A.S. & J.S., 118 WLR 2221 (Super. Ct. 1990).

**Jurisdiction.**

The Court had jurisdiction over motion to terminate the parent and child relationship where such motion was filed while the child was in agency custody, even though the hearing on such motion took place after the custody order had expired and custody had not been formally extended. In re B.J.R., 113 WLR 861 (Super. Ct. 1985).

**Review.**

Appellate court would not reverse judgment terminating parental rights of parents of neglected children, based on trial court's failure to enter written findings of neglect before hearing on motion to terminate parental rights was held, where parents failed to raise issue at trial. D.C. Code 1981, § 16-2354(b). In re Dom. L.S., 722 A.2d 343, 1998 D.C. App. LEXIS 249 (1998).

## § 16-2355. Consideration of termination of the parent and child relationship at review hearings.

(a) After a child adjudicated neglected by the Division pursuant to this chapter has been committed by the Division to the custody of a department, agency or institution for more than eighteen (18) months and no hearing on a motion for the termination of the parent and child relationship has been held within the preceding twelve (12) months, the Division shall, at a review hearing, determine why a motion to terminate the parent and child relationship has not been filed.



(b) For each child who remains in custody for three (3) years or more, the Division shall, at each annual review hearing, determine why a motion to terminate the parent and child relationships has not been filed.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2355.  
1973 Ed., § 16-2355.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## § 16-2356. Parties.

Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child. The judge may at his or her discretion, name on his or her own motion or in response to a motion for joinder or intervention, join additional parties to a proceeding to terminate the parent and child relationship.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2356.  
1973 Ed., § 16-2356.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Hearing.  
Intervenor.  
Notice.  
Putative fathers, generally.

#### Hearing.

Fact that agency having legal custody of child, i.e., District of Columbia Department of Human Services, was party to termination of parental rights (TPR) proceedings did not prevent agency, through its attorney, from waiving its presence at hearing on TPR motion. D.C. Code 1981, § 16-2356. In re L.H., 634 A.2d 1230, 1993 D.C. App. LEXIS 319 (1993).

#### Intervenor.

Proceeding for termination of parental rights and adoption proceeding would be consolidated, over objection of foster mother who had filed adoption petition that competed with similar petition filed by maternal grandparents, where foster mother had intervened in termination proceeding and thus had shown her willingness to confront natural mother, and only foster mother, and not guardian ad litem representing child, had appealed denial of termination of parental rights, and thus there was no evidence of any interest of child that would indicate that termination proceeding should continue sepa-

rately. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

#### Notice.

Child's incarcerated father received all notice due him of proceeding for termination of his parental rights, where he received proper notice and had opportunity to be heard at termination hearing. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

A putative father is entitled to notice of a pending adoption proceeding so that he may assert right to grasp his opportunity interest in claiming the obligations of parenthood. U.S.C. Const.Amend. 14. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

#### Putative fathers, generally.

In an adoption proceeding, the putative father may be required to establish paternity before he can contest the adoption or require the court to consider his opinion as to the child's best interest. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

In a termination of parental rights (TPR) proceeding, there is no legal prohibition to the trial court's resolving the issue of paternity of a putative father who has been identified by the child's mother as the father or who claims that status, provided he has been afforded proper notice and an opportunity to be heard. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M.,

665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in termination of parental rights (TPR) proceeding has authority to consider putative fathers as "parents" and to terminate their rights and interests in the child without recourse to separate adoption proceedings. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in termination of parental rights (TPR) proceeding abused its discretion in failing to recognize that it had the alternative to terminate rights of two putative fathers, even though paternity had not been established and neither man appeared at the hearing, where child's counsel represented that one of the men

was personally served notice and where alternative service of the other by posting was granted after he could be located by search of appropriate records. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

Trial court in a termination of parental rights (TPR) proceeding has authority under TPR statute to resolve finally any claimed putative father's right to assert paternity in a subsequent proceeding provided he has been served properly with notice and has been afforded an opportunity to be heard on the issues. D.C. Code 1981, §§ 16-2351 to 16-2365. In re T.M., 665 A.2d 207, 1995 D.C. App. LEXIS 187 (1995).

## § 16-2357. Notice.

(a) When a motion to terminate the parent and child relationship is filed, a judge shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

(b) A judge shall direct the issuance to and personal service upon the child's parent of a summons together with a copy of the motion to terminate the parent and child relationship.

(c) When it is appropriate to the proper disposition of the case, a judge may direct the service of a summons upon other persons.

(d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2357.

1973 Ed., § 16-2357.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Due process.

Service of process.

Sufficiency of notice, generally.

#### Due process.

Father who had abandoned child and left her to the care of the city, who had not attempted to contact her or inquire as to her well being, and whose whereabouts were not known was not deprived of due process when methods other than personal service were used in an attempt to give him notice of termination of parental rights proceeding. D.C. Code 1981, § 16-2357; Neglect Rule 14(a)(1). In re N., 446 A.2d 16, 1982 D.C. App. LEXIS 357 (1982).

#### Service of process.

It is only when the serving party is unable to effect personal service that provisions for other types of notice to a parent concerning proceedings to terminate the parent-child relationship may be given. D.C. Code 1981, § 16-2357; Neglect Rule 14(a)(1). In re N., 446 A.2d 16, 1982 D.C. App. LEXIS 357 (1982).

Where no record of father's residence existed and social worker assigned to the case for six years had not heard from him, where attempts were made to locate him through a brother and an aunt, where he was not imprisoned and his parole officer had no idea where he was, and where an investigator had attempted to locate him but had no success, efforts at personal service would have been fruitless and service by other means was appropriate. D.C. Code



1981, § 16-2357; Neglect Rule 14(a)(1). In re N., 446 A.2d 16, 1982 D.C. App. LEXIS 357 (1982).

**Sufficiency of notice, generally.**

Mother was not denied statutorily required notice of trial in termination of parental rights proceeding; mother was served with summons, in compliance with statute, for original trial date, mother's attorney had notice of new date, as change was made at his request, he was present at all proceedings, and mother concededly had actual notice of new date. D.C. Code 1981, §§ 16-2357(a, b), 16-2359(a); Neglect

Rule 25(b)(1). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Trial court did not abuse its discretion in authorizing notice to father of neglect proceedings through the posting of the notice in the Office of the clerk of family division where the father's whereabouts were known. D.C. Code 1981, § 16-2357; Neglect Rule 14(a)(1). In re N., 446 A.2d 16, 1982 D.C. App. LEXIS 357 (1982).

## § 16-2358. Conduct of hearings.

(a) All hearings and proceedings on a motion to terminate the parent and child relationship shall be held by the judge, without a jury.

(b) All hearings and proceedings held pursuant to this subchapter shall be recorded by appropriate means.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but a judge may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If a judge finds it is in the best interests of the child, he or she may temporarily exclude the child from any proceeding. Under no circumstances, however, may counsel in the case be excluded.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2358.

1973 Ed., § 16-2358.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

## § 16-2359. Adjudicatory hearing.

(a) A judge shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If the parent has been given proper notice but has failed to appear the judge may proceed in his or her absence.

(b) A judge shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

(c) Every party shall have the right to present evidence, to be heard in his or her own behalf and to cross-examine witnesses called by another party.

(d) All evidence which is relevant, material, and competent to the issues before the judge shall be admitted.

(e) Notwithstanding the provisions of D.C. Official Code, sections 14-306 and 14-307, neither the spouse or domestic partner privilege nor the physician/

client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.

(f) A judge may enter an order permanently terminating the parent and child relationship after considering all of the evidence presented and after making a determination based upon clear and convincing evidence that termination of the parent and child relationship is in the best interest of the child. If a judge does not find that sufficient grounds exist for termination, the motion for termination of the parent and child relationship may be dismissed.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 3, 1979, D.C. Law 2-136, § 805(d), 25 DCR 5055; Sept. 6, 1980, D.C. Law 3-85, § 4, 27 DCR 2900; Sept. 12, 2008, D.C. Law 17-231, § 20(h), 55 DCR 6758.)

**Prior Codifications.** — 1981 Ed., § 16-2359.

1973 Ed., § 16-2359.

**Effect of amendments.** — D.C. Law 17-231, in subsec. (e), substituted “spouse or domestic partner” for “husband/wife”.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 2-136.** — Law 2-136, the “District of Columbia Mental Health Information Act of 1978,” was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978, and

October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-85.** — Law 3-85, the “Enacted Titles Numbering and Amendment Act of 1980,” was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.

Adoptive placement.

Judicial discretion.

Presumptions and burden of proof.

Review.

Sufficiency of evidence.

Sufficiency of notice.

### Admissibility of evidence.

Only evidence which is relevant, material, and competent to the issues may be admitted at parental rights termination hearing and underlie the termination decision. D.C. Code 1981, § 16-2359(d). In re C.V., 719 A.2d 1246, 1998 D.C. App. LEXIS 213 (1998).

Section 16-2315(e)(1) is a limited provision designed to secure a thorough examination of a custodian whose mental capacity is the subject of a neglect petition. Subsection (e) of this section is a much broader provision sweeping aside the husband-wife privilege and the doctor-patient privilege as regards any evidence which may be offered in the course of a termination hearing regardless of whether it was

obtained through a § 16-2315(e)(1) examination or otherwise and regardless of whether it concerns the child's custodian or other involved persons. In re O.L., 117 WLR 1329 (Super. Ct. 1989).

### Adoptive placement.

Prospective adoptive placement was not required before court could terminate father's parental rights. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

In determining whether drastic measure of terminating parental rights is required in child's best interests, court must consider adoptive prospects of child along with other relevant factors. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Testimony by Department of Human Services officials in support proposition that termination of parental rights will enhance prospects for adoptive placement is not necessary to satisfy requirement for termination of parental rights on ground of neglect that termination promotes timely integration of child into stable



and permanent home; however, trial court has discretion to consider testimony from officials about practical plans and realistic expectations for adoptive placement of particular child, and natural parent may offer evidence of obstacles standing between child and adoptive placement. D.C. Code 1981, § 16-2353(b)(1). In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

### Judicial discretion.

Determination of whether best interests of child are served by terminating parental rights of natural parents is confided to discretion of trial court. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

In termination proceedings, choice between having conversation with child in chambers and putting child on witness stand is within judge's sound discretion. In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Generally, trial judges have considerable discretion in applying statutory factors in deciding whether to enter order for termination of parental rights. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

### Presumptions and burden of proof.

Party seeking termination of parental rights must provide evidence that will produce in mind of trier of fact a firm belief or conviction that termination of parental rights is in best interest of child. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court applied correct standard of proof, in deciding whether to terminate father's parental rights; court order enumerated statutory factors it considered, made detailed factual findings, applied statutory factors to those findings, and explicitly declared that it found by clear and convincing evidence that termination of parental rights was in best interest of child. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court must satisfy itself that possible benefits of termination of parental rights clearly outweigh costs of deferring decision. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Termination of parental rights must be supported by clear and convincing evidence that it is in the child's best interest. D.C. Code 1981, § 16-2359(f). In re C.V., 719 A.2d 1246, 1998 D.C. App. LEXIS 213 (1998).

Finding by trial court that termination of parental rights is in best interests of child must be based on clear and convincing evidence. D.C. Code 1981, §§ 16-2353(a), 16-2359(f). In re

A.S.C., 671 A.2d 942, 1996 D.C. App. LEXIS 24 (1996).

Party moving for termination of parental rights has burden of supplying clear and convincing proof that termination of parental rights would be in child's best interest. D.C. Code 1981, § 16-2359(f). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

Clear and convincing evidence that termination of parent-child relationship is in best interest of child is such evidence as will produce in the mind of trier of fact a firm belief or conviction as to facts sought to be established. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re M.M.M., 485 A.2d 180, 1984 D.C. App. LEXIS 563 (1984).

Proofs made in termination of parental rights proceeding must satisfy clear and convincing evidentiary standard. D.C. Code 1981, § 16-2359(f). In re K.A., 484 A.2d 992, 1984 D.C. App. LEXIS 548 (1984).

### Review.

In reviewing trial court's decision terminating parental rights of natural parents, Court of Appeals checks to be sure that trial court has exercised its discretion within range of permissible alternatives, based on all relevant factors, and no improper factor. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court erred in failing to give requisite "weighty consideration" to natural parents' preference, expressed in proceeding to terminate parental rights, that child be placed in custody of relative, and thus, remand was required to permit further exploration into parents' preference. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Trial court should have more explicitly considered possibility that father with history of drug abuse and instability might have become suitable parent within foreseeable future, and that in meantime child might have remained in foster care, before court terminated father's parental rights, and thus, remand was warranted, where evidence including father's employment suggested, at least, that father might have been on road to becoming fit parent, and although presence of mother with history of drug abuse in home was cause for concern, it was not shown that mother would be living there permanently. D.C. Code 1981, §§ 16-2353(a, b), 16-2359(f). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

In proceeding to terminate parental rights, the judge's determination of whether the applicable standard has been satisfied is reviewable only for abuse of discretion, and the judge has wide latitude in applying the statutory criteria. D.C. Code 1981, § 16-2359(f). In re A.N.C., 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

In proceeding to terminate parental rights, a trial court's factual findings must be sustained unless they are clearly erroneous. D.C. Code 1981, § 16-2359. In re An.C., 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

Trial court's determination as to whether clear and convincing evidence standard has been met in parental rights termination case is reviewable only for abuse of discretion. D.C. Code 1981, § 16-2359(f). In re A.R., 679 A.2d 470, 1996 D.C. App. LEXIS 121 (1996).

Court of Appeals reviews trial court's judgment for termination of parental rights only for abuse of discretion. D.C. Code 1981, § 16-2353(a). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Trial court did not abuse its discretion in termination of parental rights proceeding in precluding child from answering questions about adoption; judge of trial court did not bar all testimony by the child, but did let her answer questions as to how she liked her visit with her mother and how she felt about her mother, court particularly believed the child at issue could be harmed by sense of having had to make final choice herself, and judge had ample testimony before him of child's desire for adoption and ambivalence about renewed unification with her mother. D.C. Code 1981, §§ 16-2320(g), 16-2353(a), (b)(4), 16-2359(f). In re T.W., 623 A.2d 116, 1993 D.C. App. LEXIS 87 (1993).

Where only after ascertaining that natural parent had lengthy history of mental illness, that she presently resided in community on convalescent leave from hospital, and that she received notice of hearing, did trial court elect to proceed in her absence, there was no abuse of discretion in trial court's proceeding without natural parent in termination proceeding. D.C. Code 1978 Supp. § 16-2359(a). In re L., 434 A.2d 1004, 1981 D.C. App. LEXIS 349 (1981).

#### **Sufficiency of evidence.**

It was in neglected children's best interests to terminate incarcerated father's parental rights to allow foster mother to adopt children, instead of placing children with father's mother or sister as he requested, where children had bonded with foster mother for nearly two years. D.C. Code 1981, § 16-2359(f). In re An.C., 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

Testimony of sons, ages 12 and 8, was not required for termination of mother's parental rights; record was replete with references with respect to boys' opinions from statements made to others concerning relationship with mother and foster parents, and judge made findings about boys' opinions in discussion of psycholo-

gist's testimony. D.C. Code 1981, § 16-2353(a), (b)(4). In re I.B., 631 A.2d 1225, 1993 D.C. App. LEXIS 239 (1993).

Trial court's express finding that two-year-old child was suitable for adoption at present time in view of age and health characteristics was sufficient to satisfy statutory requirement for termination of parental rights on ground of neglect that termination would promote timely integration of child into stable and permanent home, despite lack of testimony by Department of Human Services officials that termination would enhance prospects for adoptive placement; finding was based on child's age and physical and emotional development. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

#### **Sufficiency of notice.**

Fact that father was not served with original neglect petition and did not personally attend neglect hearing did not preclude termination of his parental rights, since father had notice of neglect hearing and court appointed counsel was present at hearing to protect father's interests. D.C. Code 1981, § 16-2359. In re An.C., 722 A.2d 36, 1998 D.C. App. LEXIS 241 (1998).

Mother was not denied statutorily required notice of trial in termination of parental rights proceeding; mother was served with summons, in compliance with statute, for original trial date, mother's attorney had notice of new date, as change was made at his request, he was present at all proceedings, and mother concededly had actual notice of new date. D.C. Code 1981, §§ 16-2357(a, b), 16-2359(a); Neglect Rule 25(b)(1). In re P.D., 664 A.2d 337, 1995 D.C. App. LEXIS 164 (1995), writ of certiorari denied by 519 U.S. 1017, 117 S. Ct. 531, 136 L. Ed. 2d 417, 1996 U.S. LEXIS 7318, 65 U.S.L.W. 3399 (1996).

Information which child placement agency furnished to unwed father failed to provide minimum notice required by due process to enable father to assert his right to custody of child at meaningful time and in meaningful manner, where letters sent by agency to African father did not inform father of his basic right to seek custody of child and of his right to participate at court hearing that would be scheduled to determine permanent placement of child, but rather merely told father that he had right to acknowledge or deny paternity and that effort had to be made to inform father of plans for adoption, and provided father with adoption consent forms. (Per Ferren, J., with Chief Judge concurring separately.) U.S. Const. Amends. 5, 14. H.R. (In re Baby Boy C.), 581 A.2d 1141, 1990 D.C. App. LEXIS 258 (1990).



## § 16-2360. Disposition after termination.

(a) If a judge finds that sufficient grounds exist for the termination of the parent and child relationship, the judge shall so order and decree and shall vest the legal custody of the child in a department, agency or institution.

(b) The department, agency or institution to which a child is committed after the termination of the parent and child relationship pursuant to this subchapter shall be responsible for seeking the prompt adoptive placement of the child and, if an adoptive placement has not been made within three (3) months, the department, agency, or institution shall list the child on all appropriate local, regional and national adoption exchanges. If an adoptive placement has not been made within six (6) months of the termination, a hearing shall be held and within every six (6) months thereafter the department, agency or institution shall report to the Division on its efforts to secure an adoptive placement, including but not limited to the following information:

(1) the extent to which an adoption has been explored with the child's foster parent and any reasons why an adoption by the foster parent is not appropriate;

(2) all adoption exchanges with which the child has been listed and the date of each listing; and

(3) the limitations placed on the families to be considered for the adoption of the child.

(c) The information provided pursuant to subsection (b) shall be provided to the guardian ad litem at least ten (10) days prior to a review hearing.

(d) A notice of a review hearing shall be given as prescribed by rules of the Superior Court of the District of Columbia to the child's guardian ad litem. Any person with whom the child has been living for six (6) months or more shall be given notice of hearings and shall upon his or her request be joined as a party to a review hearing.

(e) If the Division finds that the department, agency or institution vested with the custody of the child is not making sufficient efforts to secure an adoptive placement for the child or that inappropriate limitations have been placed on potential adoptive families, the Division may order such additional efforts as it deems appropriate or may order that the imposition of inappropriate limitations be eliminated or may transfer the power to consent to an adoption together with the vestment of legal custody to any other licensed child placement agency.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2360.  
1973 Ed., § 16-2360.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### CASE NOTES

#### ANALYSIS

Adoptive placement, generally.  
Consolidated proceedings.  
Grandparents.

Parents' rights.  
Review.

#### Adoptive placement, generally.

Failure to identify adoptive parents for child

does not preclude termination of parental rights in neglect proceeding. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Testimony by Department of Human Services officials in support of proposition that termination of parental rights will enhance prospects for adoptive placement is not necessary to satisfy requirement for termination of parental rights on ground of neglect that termination promotes timely integration of child into stable and permanent home; however, trial court has discretion to consider testimony from officials about practical plans and realistic expectations for adoptive placement of particular child, and natural parent may offer evidence of obstacles standing between child and adoptive placement. D.C. Code 1981, § 16-2353(b)(1). In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

Trial court's express finding that two-year-old child was suitable for adoption at present time in view of age and health characteristics was sufficient to satisfy statutory requirement for termination of parental rights on ground of neglect that termination would promote timely integration of child into stable and permanent home, despite lack of testimony by Department of Human Services officials that termination would enhance prospects for adoptive placement; finding was based on child's age and physical and emotional development. D.C. Code 1981, §§ 16-2351 to 16-2365. In re A.W., 569 A.2d 168, 1990 D.C. App. LEXIS 15 (1990).

### Consolidated proceedings.

Proceeding for termination of parental rights and adoption proceeding would be consolidated, over objection of foster mother who had filed adoption petition that competed with similar petition filed by maternal grandparents, where foster mother had intervened in termination proceeding and thus had shown her willingness to confront natural mother, and only foster mother, and not guardian ad litem representing child, had appealed denial of termination of parental rights, and thus there was no evidence of any interest of child that would indicate that termination proceeding should continue separately. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### Grandparents.

Maternal grandparents' petition to adopt child could still be granted even after termination of mother's parental rights. In re Baby Girl

D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### Parents' rights.

Parents have fundamental rights at stake in both neglect and termination of parental rights (TPR) proceedings and both types of proceedings require the trial court to act as *parens patriae* to protect the child from harm: in a TPR, the parent faces the possibility of a permanent termination of the parent-child relationship; in a neglect proceeding, the parent faces the possibility of serious state interference in that relationship, interference that could lead to a temporary or permanent loss of custody. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

Both termination of parental rights (TPR) proceedings and neglect proceedings similarly require the trial court to consider the rights of the parent and the well-being of the child. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

As long as separately pending parental rights termination and adoption proceedings as to same child are possible, it is proper for termination court to evaluate parent's relationship with child and thus to decide whether that parent should retain right to influence child's future, including parental right to consent to child's adoption. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### Review.

In the context of child neglect proceedings after the court has made an adjudication of neglect, an order that is merely a step toward restoration of physical custody, termination of parental rights, or adoption is not a "final order" and therefore is not appealable. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

Permanency planning orders in child neglect proceedings, changing the goal of the proceedings from reunification to long-term foster care, were not "final orders" that were appealable. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

An order changing a permanency planning goal in a child neglect proceeding is not a "final order" that is appealable; such an order merely sets goals for the children and does not affect the parents' substantive rights in any way. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

Order denying motion for consolidation of parental rights termination proceeding with adoption proceeding is interlocutory order that is not appealable. In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

## § 16-2361. Effect of termination decree.

- (a) An order terminating the parent and child relationship divests the



parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except the right of the child to inherit from his or her parent. The right of inheritance of the child shall be terminated only by a final order of adoption.

(b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of the child by another nor shall such parent have any right to object to the adoption or otherwise to participate in the proceedings.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(jj), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-2361.

1973 Ed., § 16-2361.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

## CASE NOTES

### ANALYSIS

Adoption proceedings.

Grandparents.

In general.

Review.

### Adoption proceedings.

Absent termination of parental rights or some other finding that parents should not longer be permitted to influence child's future, parents' rights necessarily include right to consent, or withhold consent, to child's adoption. D.C. Code 1981, §§ 16-304, 16-2361(b). In re T.J., 666 A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

If parent, through no fault of her own is unable to properly care for her child as a result of mental illness, parent still has right to consent or withhold consent to child's adoption, and this right to consent must be guarded just as zealously as the Constitution guards the right of a natural parent to the custody and companionship of his or her child. D.C. Code 1981, §§ 16-304, 16-2361(b). In re T.J., 666

A.2d 1, 1995 D.C. App. LEXIS 182 (1995), writ of certiorari denied by 518 U.S. 1028, 116 S. Ct. 2571, 135 L. Ed. 2d 1087, 1996 U.S. LEXIS 4219, 64 U.S.L.W. 3855 (1996).

### Grandparents.

Statute on termination of parental rights has no effect on whatever legal rights grandparents might have in child's future. D.C. Code 1981, § 16-2361(a). In re Baby Girl D.S., 600 A.2d 71, 1991 D.C. App. LEXIS 328 (1991).

### In general.

Natural parents lose their fundamental interests in dictating their child's future upon a formal termination of parental rights. In re Petition of T.W.M., 964 A.2d 595, 2009 D.C. App. LEXIS 17 (2009).

### Review.

Father of one of mother's children was not "aggrieved" party with standing to appeal from order terminating parental rights, insofar as order related to other child who was not father's biological child and who did not have legal relationship with father. D.C. Code 1981, §§ 11-721(b), 16-2361(a). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

## § 16-2362. Decrees.

(a) Every order of the Division terminating the parent and child relationship shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

(b) Notwithstanding the provisions of § 16-2330, all orders terminating the parent and child relationship entered pursuant to this subchapter shall not be

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final and effective until the time for noting an appeal has expired and, if a notice of appeal has been entered, the order shall not become effective until the date of the final disposition of the appeal.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(kk), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-2362.

1973 Ed., § 16-2362.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**§ 16-2363. Confidentiality of records.**

The provisions of §§ 16-2332 and 16-2333 shall apply to all juvenile case records and juvenile social records as defined therein which are created pursuant to the proceedings under this subchapter.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; Mar. 24, 1998, D.C. Law 12-81, § 10(ll), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-2363.

1973 Ed., § 16-2363.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**Legislative history of Law 12-81.** — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-2301.

**§ 16-2364. Unlawful disclosure.**

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than two hundred and fifty dollars (\$250) or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2364.

1973 Ed., § 16-2364.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

**§ 16-2365. Termination decrees of other jurisdictions.**

If the parent and child relationship has been terminated by judicial decree in another jurisdiction that decree, unless it is against the public policy of the District of Columbia, shall have the same force and effect in the District of Columbia as to matters within the jurisdiction of the District of Columbia court.



(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

**Prior Codifications.** — 1981 Ed., § 16-2365.  
1973 Ed., § 16-2365.

**Legislative history of Law 2-22.** — For legislative history of D.C. Law 2-22, see Historical and Statutory Notes following § 16-2301.

### *Subchapter IV. Court-Appointed Special Advocates.*

## **§ 16-2371. Definitions.**

For the purpose of this subchapter, the term “advocate” means a court-appointed special advocate and the term “program” means the court-appointed special advocate program established under this subchapter.

(Mar. 16, 1995, D.C. Law 10-228, § 2(b), 42 DCR 7.)

**Prior Codifications.** — 1981 Ed., § 16-2371.

**Legislative history of Law 10-228.** — Law 10-228, the “Court-Appointed Special Advocate Program Act of 1994,” was introduced in Council and assigned Bill No. 10-326, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-369 and transmitted to both Houses of Congress for its review. D.C. Law 10-228 became effective on March 16, 1995.

## **§ 16-2372. Court-appointed special advocate program.**

(a) There is established a court-appointed special advocate program to provide trained volunteers whose primary purpose is to ensure that children who are the subject of certain family division proceedings of the Superior Court of the District of Columbia are provided with appropriate service and case planning that is in their best interest.

(b) The court, in any appropriate action, may appoint an individual provided by the court-appointed special advocate program.

(c) The program shall be administered by the Family Division of the Superior Court of the District of Columbia.

(d) The Family Division shall report annually to the Chief Judge of the Superior Court of the District of Columbia, who shall report to the Council of the District of Columbia regarding the operation of the program.

(e) The Board of Judges of the Superior Court of the District of Columbia may adopt rules governing the implementation and operation of the program, including, but not limited to, training, selection, and supervision of volunteers.

(f) An advocate or a member of the administrative staff of the program is not liable for acts or omissions in providing services or performing duties on behalf of the program, unless the act or omission constitutes reckless, willful, or wanton misconduct or intentionally tortious conduct.

(g) A court-appointed special advocate shall have access to and the use of the court record in a proceeding in which the advocate has been appointed.

(Mar. 16, 1995, D.C. Law 10-228, § 2(b), 42 DCR 7.)

**Prior Codifications.** — 1981 Ed., § 16-2372.

**Emergency legislation.** — For temporary (90-day) addition of §§ 16-2381 1981 Ed. to

16-2399 1981 Ed., see § 3 of the Foster Children's Guardianship Emergency Act of 2000 (D.C. Act 13-433, August 14, 2000, 47 DCR 7467).

**Legislative history of Law 10-228.** — For legislative history of D.C. Law 10-228, see Historical and Statutory Notes following § 16-2371.

### *Subchapter V. Permanent Guardianship.*

## **§ 16-2381. Purpose of the subchapter; construction of provisions.**

The general purpose of this subchapter is to:

(1) Encourage stability in the lives of certain children who have been adjudicated to be neglected and have been removed from the custody of their parent by providing judicial procedures for the creation of a permanent guardianship in the circumstances set forth in this subchapter;

(2) Ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others; and

(3) Increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing government supervision.

(Apr. 4, 2001, D.C. Law 13-273, § 3(c), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 3(b) of the Foster Children's Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — Law 13-273, the "Foster Children's Guardianship

Act of 2000", was introduced in Council and assigned Bill No. 13-763, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-566 and transmitted to both Houses of Congress for its review. D.C. Law 13-273 became effective on April 4, 2001.

**Delegation of Authority.** — Delegation of Authority Pursuant to the Foster Children's Guardianship Congressional Review Emergency Act of 2001, Effective 2-13-01, DC Act 14-4, and Any Substantially Identical Successor Legislation, Including the Foster Children's Guardianship Act of 2000, see Mayor's Order 2001-38, March 20, 2001 (48 DCR 3438).

## **§ 16-2382. Definitions.**

(a) For the purposes of this subchapter, the term:

(1) "Agency having responsibility for the child" means the Mayor or his or her designee.

(2) "Guardianship order" means the court document that establishes the permanent guardianship and enumerates the permanent guardian's rights and responsibilities concerning the care, custody, and control of the child.

(3) "Health care" includes, but is not limited to, ordinary and emergency



medical, dental, psychological, psychiatric, and mental health care and treatment.

(4) "Permanent guardian" means an individual or individuals designated by the court pursuant to this subchapter.

(b) Except when inconsistent with this subchapter, the terms found in this subchapter shall be given the same definition as provided in section 16-2301.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 3(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2383. Grounds for the creation of a permanent guardianship.

(a) A guardianship order may not be entered unless the child has been adjudicated to be neglected pursuant to section 16-2317 and has been living with the proposed permanent guardian for at least 6 months.

(b) If the child is 14 years of age or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests.

(c) The court may issue a guardianship order only if the court finds that:

(1) The permanent guardianship is in the child's best interests;

(2) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and

(3) The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

(d) In determining whether it is in the child's best interests that a permanent guardian be designated, the court shall consider each of the following factors:

(1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the proposed permanent guardian;

(4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) Evidence that drug-related activity continues to exist in a child's home

environment after intervention and services have been provided pursuant to section 6-2104.01 [§ 4-1301.06a]. Evidence of continued drug-activity shall be given great weight.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children’s Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 3(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## CASE NOTES

### ANALYSIS

In general.

Quality of relationship.

### In general.

Trial court’s failure to personally interview 11-year-old neglected child, who was subject of permanent guardianship proceedings, in order to determine whether she preferred to live with maternal aunt and uncle or father did not invalidate finding that awarding aunt and uncle permanent guardianship was in child’s best interest; although child had expressed desire to live with mother, there was no testimony or evidence indicating that she had ever expressed desire to live with father, and father was free to call child as witness to testify as to her wishes or introduce any such evidence but

failed to do so. In re A.G., 900 A.2d 677, 2006 D.C. App. LEXIS 278 (2006).

### Quality of relationship.

Because all of the parties were not informed about child’s negative comments to magistrate judge about child’s aunt and neither mother nor guardian ad litem were given opportunity to examine aunt and uncle on the record about child’s comments and their impact on suitability of aunt and uncle as permanent guardians of child, case would be remanded to trial court with instructions to promptly reopen the adjudicatory guardianship hearing to permit the parties to examine aunt, uncle and the therapist on the record concerning child’s relationship with aunt. In re C.B., 983 A.2d 1012, 2009 D.C. App. LEXIS 602 (2009).

## § 16-2384. Motions.

(a) A motion for permanent guardianship may be filed by the proposed permanent guardian, the District of Columbia government, or by the child through his or her legal representative.

(b) A motion for a permanent guardianship may be filed any time after a neglect petition is filed pursuant to section 16-2305.

(c) A motion for permanent guardianship shall include:

- (1) The name, sex, date and place of birth, and current placement of the child;
- (2) The proposed permanent guardian’s name and relationship to the child;
- (3) The name and address of the child’s parents;
- (4) A plain and concise statement of the facts and opinions on which the permanent guardianship is sought;
- (5) A description of the child’s mental and physical health;
- (6) A statement why permanent guardianship, rather than adoption,



termination of parental rights, or return to parent, is in the child's best interests;

(7) A statement as to the various efforts taken by the moving party to locate the parent of the child;

(8) An itemization of the child's assets;

(9) A statement of compliance with Chapter 3 of Title 21, if applicable;

(10) The name of proposed successor guardians, if any, and their relationship to the child and proposed permanent guardians;

(11) Information required by Chapter 45 of Title 16; and

(12) Written consents, if any, to the permanent guardianship.

(d) When any facts required pursuant to subsection (c) of this section are not known to the moving party, if he or she shall so state in the motion, or on a motion by any party, the court, for good cause shown, may direct the filing of a bill of particulars to inform the moving party of the precise nature of the allegations of neglect.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2385. Parties.

Parties to a permanent guardianship proceeding shall be the child, the parents of the named child, the proposed permanent guardian, the agency having the legal custody of the child, and the District of Columbia. The court may, at its discretion, on its own motion, or in response to a motion for joinder or intervention, join additional parties to a guardianship proceeding.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2386. Notice.

(a) When a motion for permanent guardianship is filed, the court shall

promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.

(b) The court shall direct the issuance to and personal service upon the child's parents of a summons and a copy of the motion for permanent guardianship.

(c) When it is appropriate to the proper disposition of the case, the court may direct the service of a summons upon other persons.

(d) If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2387. Conduct of hearings.

(a) All hearings and proceedings conducted pursuant to this subchapter shall be held by a judge, without a jury.

(b) All hearings and proceedings conducted pursuant to this subchapter shall be recorded by appropriate means.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings and proceedings arising pursuant to this subchapter. Only persons necessary to such hearings and proceedings shall be admitted, but the court may, pursuant to rules of the Superior Court of the District of Columbia, admit such other persons as have a proper interest in the case or the work of the Division on the condition that they refrain from divulging information identifying the child involved in the proceedings or members of his or her family.

(d) If the court finds it is in the child's best interests, the child may be temporarily excluded from any proceeding. Under no circumstances, however, may counsel in the case be excluded.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.



## § 16-2388. Adjudicatory hearings.

(a) The court shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If a parent has been given proper notice but fails to appear, the court may proceed in the parent's absence.

(b) The court shall hear evidence presented by the moving party and the burden of proof shall rest upon the moving party.

(c) Every party shall have the right to present evidence, to be heard in his or her own behalf, and to cross-examine witnesses called by another party.

(d) All evidence which is relevant, material, and competent to the issues before the court shall be admitted.

(e) Notwithstanding the provisions of sections 14-306 and 14-307, neither the spouse or domestic partner privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter.

(f) The court may enter, modify, or terminate a guardianship order after considering all of the evidence presented, including the Mayor's report and recommendation, and after making a determination based upon a preponderance of the evidence that creation, modification, or termination of the guardianship order is in the child's best interests. If the court does not find that sufficient grounds exist to create, modify, or terminate a guardianship order, the motion may be dismissed.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; Sept. 12, 2008, D.C. Law 17-231, § 20(i), 55 DCR 6758.)

**Effect of amendments.** — D.C. Law 17-231, in subsec. (e), substituted "spouse or domestic partner" for "husband/wife".

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children's Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001, law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

**Legislative history of Law 17-231.** — For Law 17-231, see notes following § 16-904.

## CASE NOTES

### ANALYSIS

#### In general.

Right to present evidence.

#### In general.

Statute authorizing trial court to grant petition by neglected child's maternal aunt and uncle for permanent guardianship based on preponderance of the evidence standard, rather than clear and convincing evidence standard governing termination of parental rights proceedings, did not violate father's due process

rights; guardianship did not operate as final and absolute termination of father's parental rights, father retained right to move to terminate guardianship at any time, and trial court on such motion would be required to order termination of guardianship if termination was in best interests of child. *In re A.G.*, 900 A.2d 677, 2006 D.C. App. LEXIS 278 (2006).

#### Right to present evidence.

Because all of the parties were not informed about child's negative comments to magistrate

judge about child's aunt and neither mother nor guardian ad litem were given opportunity to examine aunt and uncle on the record about child's comments and their impact on suitability of aunt and uncle as permanent guardians of child, case would be remanded to trial court

with instructions to promptly reopen the adjudicatory guardianship hearing to permit the parties to examine aunt, uncle and the therapist on the record concerning child's relationship with aunt. In re C.B., 983 A.2d 1012, 2009 D.C. App. LEXIS 602 (2009).

## § 16-2389. Effect of guardianship order.

(a) Unless the court specifies otherwise, the permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

- (1) Protect, nurture, discipline, and educate the child;
- (2) Provide food, clothing, shelter, education as required by law, and routine health care for the child;
- (3) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- (4) Authorize a release of health care and educational information;
- (5) Authorize a release of information when consent of a parent is required by law, regulation, or policy;
- (6) Consent to social and school activities of the child;
- (7) Consent to military enlistment;
- (8) Obtain representation for the child in legal actions; and
- (9) Determine the nature and extent of the child's contact with other persons.

(b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

(c) Entry of a guardianship order does not terminate the parent and child relationship, including:

- (1) The right of the child to inherit from his or her parents;
- (2) The parents' right to visit or contact the child (except as limited by the court);
- (3) The parents' right to consent to the child's adoption;
- (4) The parents' right to determine the child's religious affiliation; and
- (5) The parents' responsibility to provide financial, medical, and other support for the child.

(d) The guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. The court may determine whether the visitation or contact is in the child's best interest.

(e) Except as required by a motion under subsection (f) of this section, upon entry of a guardianship order, and during the period of time such an order remains in effect, the requirements of sections 16-2322 and 16-2323 shall be suspended.

(f) The court shall make a permanency determination and close the neglect case upon motion by any party to the permanent guardianship proceeding if the court finds that such a determination is in the child's best interest.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)



**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399., see § 3(b) of the Foster Children’s Guardianship Temporary Act of 2000 (D.C. Law 13-208, April 4, 2001,<sup>4</sup> law notification 48 DCR 3239).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## CASE NOTES

### In general.

Trial court’s decision to leave decision regarding father’s visitation with neglected child to discretion of child’s maternal aunt and uncle, who had been awarded permanent guardianship of child, did not violate father’s constitutional right to maintain relationship with child;

trial court did not prohibit father from contacting or visiting child, aunt and uncle indicated willingness to permit father visitation with child, and father retained right to petition for modification of guardianship order if aunt and uncle denied visitation. In re A.G., 900 A.2d 677, 2006 D.C. App. LEXIS 278 (2006).

## § 16-2390. Jurisdiction.

(a) Subject to subsection (b) of this section, the court shall have jurisdiction to enter guardianship order and shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches 21 years of age; provided, that when the child reaches 18 years of age, the child consents and the court finds it is in the best interest of the child.

(b) A child who exits foster care to guardianship may not reenter foster care after age 18.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; Sept. 24, 2010, D.C. Law 18-230, § 502(a), 57 DCR 6951.)

**Effect of amendments.** — D.C. Law 18-230 rewrote the section, which had read as follows: “The court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches 18 years of age. If the court finds that it is in the child’s best interest and if the child consents, the court may retain jurisdiction until the child reaches 21 years of age.”

**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 3(a) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

For temporary (90 day) amendment of section, see § 3(a) of Adoption and Guardianship Subsidy Emergency Amendment Act of 2010 (D.C. Act 18-393, May 7, 2010, 57 DCR 4346).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

**Legislative history of Law 13-208.** — For D.C. Law 13-208, see notes following § 16-2381.

**Legislative history of Law 18-230.** — For Law 18-230, see notes following § 16-309.

## § 16-2391. Relocation.

The permanent guardian shall not relocate with the child over 100 miles from his or her place of residence at the time the guardianship order is entered without filing a notice with the court, which is personally served on all parties, 15 business days before the relocation.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2392. Guardianship order; finality; appeals; transcripts.

(a) Every guardianship order shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court’s jurisdiction.

(b) Except as otherwise expressly provided by law, in all hearings and cases tried before the court pursuant to this subchapter, the judgment of the court shall be final.

(c) In all appeals from decisions of the court with respect to an order under this subchapter, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(d) Upon the filing of a motion and supporting affidavit stating that he or she is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal of an order under this subchapter shall be furnished, at no cost or at such part of cost as he or she is able to pay, so much of the transcript as is necessary to prepare adequately and support the appeal.

(e) An appeal does not operate to stay the order, judgment, or decree appealed from, but whenever the case is properly before the appellate court, that court, on application and hearing, may order otherwise if suitable provision is made in the order for the care and custody of the child.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship



Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

### CASE NOTES

#### ANALYSIS

In general.  
Motion for review.

#### In general.

Requirement that mother enter therapy and undergo medication assessment as condition for her continued supervised visitation with child did not violate mother's visitation rights with child, whose paternal grandparents had been named child's permanent guardians in child neglect proceeding; mother had been diagnosed with borderline personality disorder, she was unable to control her anger or her hurtful comments, grandmother testified that during telephone conversation between mother and child, mother used profanity and upset child such that child hung up the telephone, and court-appointed psychiatrist testified that, without proper treatment and medication, it was "unlikely" that mother was capable of acting appropriately around child. In re D.B., 879 A.2d 682, 2005 D.C. App. LEXIS 391 (2005).

Granting discretion to child's paternal grandparents to cease mother's supervised visitation with child if mother acted inappropriately did not violate mother's visitation rights, in child neglect proceeding in which grandparents had been named child's permanent guardians; there was no evidence supporting mother's contention that grandparents would misuse their discretion to improperly prevent mother from visiting child, and grandmother testified that she does not want to interrupt relationship between child and her parents and that she

believed that child should have a good relationship with her mother and father. In re D.B., 879 A.2d 682, 2005 D.C. App. LEXIS 391 (2005).

Requiring mother to exercise her supervised visitation with child in New Jersey where child resided with paternal grandparents, who had been named child's permanent guardians in child neglect proceeding, did not violate mother's visitation rights; there was ample evidence that child should live with her grandparents, mother presented no evidence that she was unable to travel to New Jersey, she failed to explain why she never accompanied her mother on trips to New Jersey, and, even if mother was unable to travel to New Jersey, guardianship order required grandparents to take child to see mother in District of Columbia at least three times per year. In re D.B., 879 A.2d 682, 2005 D.C. App. LEXIS 391 (2005).

#### Motion for review.

Mother's motion for review of magistrate's order in child neglect proceeding, in which magistrate awarded permanent guardianship of child to paternal grandparents, was timely, though it was not filed within ten-day period following entry of order of judgment as required by Superior Court Family Division rule governing filing and service requirements for motions for review of hearing commissioner's order of judgment, as rule governing computations of time, providing for three-day mailing extension, applied, as did provision of rule excluding intervening Saturdays, Sundays, and holidays. In re D.B., 879 A.2d 682, 2005 D.C. App. LEXIS 391 (2005).

## § 16-2393. Confidentiality of records.

The provisions of sections 16-2332 and 16-2333 shall apply to all records and files that are created pursuant to proceedings under this subchapter.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

§ 16-2394. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$250 or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

§ 16-2395. Modification, termination, or enforcement of the guardianship order.

(a) Any party may move the court to modify, terminate, or enforce a guardianship order or an order of child support created under this subchapter.

(b) Notice of a motion to modify, terminate, or enforce a guardianship order or an order of child support shall be personally served on all parties. If personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

(c) The court may issue an order of reference directing the Mayor to file a report and recommendation regarding the proposed modification or termination of the guardianship order within 45 days of the filing date of the motion.

(d) A guardianship order may be modified or terminated if the court finds, by a preponderance of the evidence, that there has been a substantial and material change in the child’s circumstances subsequent to the entry of the guardianship order and that it is in the child’s best interests to modify or terminate the guardianship order.

(e) The court shall hold an adjudicatory hearing as provided for in section 16-2388 before modifying or terminating a guardianship order and shall, at the conclusion of the hearing, enter a written order reciting the findings upon which such order is based, including findings pertaining to the court’s jurisdiction.

(f) Upon entry of an order terminating the guardianship, the permanent guardian shall no longer be entitled to physical custody of the child, have any other parental rights and responsibilities concerning the child created under this subchapter, or have party status in any further proceeding brought under this subchapter.



(g) Upon entry of an order terminating the guardianship, the court shall hold a hearing pursuant to section 16-2323.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2396. Support.

(a) Nothing under this subchapter shall preclude the permanent guardian from receiving money paid for the child’s support to the child’s parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

(b) After due notice to the parent or other persons legally obligated to care for and support the child and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, “Permanent Guardianship”, consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children’s Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children’s Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2397. Interlocutory order of guardianship.

(a) If it is in the child’s best interests, the court may enter an interlocutory guardianship order, which shall by its terms automatically become a guardianship order on a date therein named, not less than 6 months nor more than one year from the date of entry of the interlocutory order, unless in the interim the order shall have been set aside for cause shown.

(b) The agency having responsibility for the child shall be permitted to visit

the child during the period of the interlocutory order and may be ordered to provide services as specified in the interlocutory order.

(c) The court may revoke its interlocutory guardianship order, either on its own motion or on the motion of one of the parties, for good cause shown, at any time before it becomes a guardianship order if it is in the child's best interests. Before the revocation, personal notice shall be given to the parties and an adjudicatory hearing shall be conducted pursuant to section 16-2388.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2398. Successor guardian.

(a) Upon filing a motion for permanent guardianship pursuant to section 16-2384, the movant may designate and the court shall approve any successor guardian.

(b) A successor guardian may be designated or removed after the creation of the permanent guardianship by the filing of a motion to modify pursuant to section 16-2395.

(c) The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child upon the permanent guardian's death, or physical or mental infirmity.

(d) The successor guardian shall move the court for a modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child until the court conducts a hearing on the motion to modify.

(e) A motion filed pursuant to this section shall:

(1) Include information required by section 16-2384(c);

(2) Append the original order which designated the successor guardian; and

(3) Append a copy of either:

(A) Proof of the permanent guardian's death, such as a copy of a death certificate or funeral home receipt; or

(B) Proof of the permanent guardian's physical or mental infirmity.

(f) Before issuing a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the court shall, in addition to the requirements specified in section 16-2395(e), find that:

(1) The successor guardian was duly designated by the permanent guardian;



- (2) The permanent guardian is deceased or is physically or mentally infirm;
- (3) The transfer of permanent guardianship is in the child's best interests;
- (4) Adoption, termination of parental rights, or return to parent is not appropriate for the child; and
- (5) The successor guardian is suitable and able to provide a safe and permanent home for the child.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637.)

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Re-

view Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

## § 16-2399. Permanent guardianship subsidy.

(a) To the extent that appropriated funds are available, the Mayor may make subsidy payments to a permanent guardian, irrespective of the permanent guardian's state of residence, as needed on behalf of a child with special needs where the permanent guardian has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. For the purposes of this section a "child with special needs" includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group which should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement except for the acceptance of the child as a member of the permanent guardian's family.

(b) For a permanent guardian to be eligible for subsidy payments under this section:

- (1) The child must be adjudicated neglected pursuant to section 16-2317;
- (2) The child must be committed to the legal custody of the Child and Family Services Agency; and
- (3) Repealed; and
- (4) A subsidy payment agreement must be entered into by the Child and Family Services Agency and the permanent guardian.

(c) Subsidy payments allowed under this section may be paid, subject to the availability of appropriated funds necessary to carry out the provisions of this section, on a long-term basis to help a permanent guardian whose income is limited and likely to remain so, or on a time-limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

(d)(1) Except as provided in paragraph (2) of this subsection, eligibility for

subsidy payments under this section may continue during the period of the guardianship order until the child reaches 18 years of age.

(2) For guardianships that are finalized on or after May 7, 2010, eligibility for subsidy payments under this section shall continue during the period of the guardianship order until the child reaches 21 years of age.

(e) No subsidy payment to a permanent guardian shall be made on behalf of any child with respect to whom a guardianship order has been entered by the Superior Court of the District of Columbia, pursuant to this subchapter, before October 1, 2000.

(f) Once during each calendar year and at other times during the year when changed conditions and costs are deemed by the Mayor to warrant review, the Mayor shall review the need for continuing each permanent guardianship subsidy. A permanent guardian who is subject to a subsidy agreement under this section may request, in writing, at any time, for reasons set forth in the request, a review of the amount of the payment or the level of continuing payments. Such review shall begin not later than 30 days from the receipt of the request by the Mayor. At the time of a review, appropriate adjustments in payment shall be made based upon changes in the needs of the child. Any adjustment may be made retroactive to the date a request for review was received by the Mayor. If a request for review is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 5 of Title 2.

(g) The Mayor shall disseminate information to prospective permanent guardians as to eligibility for subsidy under this section.

(h) The Mayor shall keep such records as are necessary to evaluate the effectiveness of permanent guardianship subsidies as a means of encouraging and promoting the placement of children with special needs with permanent guardians. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include the number of children placed with permanent guardians under subsidy payment agreements during the year preceding the annual report and the major characteristics of the children placed.

(i) Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; Oct. 26, 2001, D.C. Law 14-42, § 5, 48 DCR 7612; Sept. 24, 2010, D.C. Law 18-230, § 502(b), 57 DCR 6951.)

**Effect of amendments.** — D.C. Law 14-42, in subsec. (b)(1), deleted “abused or” following “adjudicated”.

D.C. Law 18-230, in subsec. (b)(2), inserted “and” at the end; repealed subsec. (b)(3); in

subsec. (d), designated the existing text as par. (1); in subsec. (d)(1), substituted “Except as provided in paragraph (2) of this subsection, eligibility for subsidy” for “Eligibility for subsidy”; and added subsec. (d)(2).



**Temporary Amendment of Section.** — For temporary (225 day) amendment of section, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Temporary Addition of Section.** — For temporary (225 day) addition of subchapter V, "Permanent Guardianship", consisting of §§ 16-2381 to 16-2399, see § 3(b) of the Adoption and Guardianship Subsidy Temporary Amendment Act of 2010 (D.C. Law 18-208, July 27, 2010, law notification 57 DCR 7547).

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2(b) of the Foster Children's Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 63).

For temporary (90 day) addition of section, see § 3(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

For temporary (90 day) amendment of section, see § 5 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 3(b) of Adoption and Guardianship

Subsidy Emergency Amendment Act of 2010 (D.C. Act 18-393, May 7, 2010, 57 DCR 4346).

**Legislative history of Law 13-273.** — For D.C. Law 13-273, see notes following § 16-2381.

**Legislative history of Law 14-42.** — Law 14-42, the "Technical Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

**Legislative history of Law 18-230.** — For Law 18-230, see notes following § 16-309.

**Delegation of Authority.** — Delegation of Authority Pursuant to the Foster Children's Guardianship Congressional Review Emergency Act of 2001, Effective 2-13-01, DC Act 14-4, and any Substantially Identical Successor Legislation, Including the Foster Children's Guardianship Act of 2000, DC Act 13-566 (Pending Congressional Review), see Mayor's Order 2001-49, April 11, 2001 (48 DCR 4726).

## CHAPTER 25. CHANGE OF NAME.

Sec.

16-2501. Application; persons who may file.

16-2502. Notice; contents.

Sec.

16-2503. Decree.

### § 16-2501. Application; persons who may file.

Whoever, being a resident of the District and desiring a change of name, may file an application in the Superior Court setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend.

(Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(i).)

**Cross references.** — Adopted persons, change of name, see § 16-312.

Superior court, jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-2501.

1973 Ed., § 16-2501.

### § 16-2502. Notice; contents.

Prior to a hearing pursuant to this chapter, notice of the filing of the application, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in a newspaper in general circulation published in the District.

(Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2502.

1973 Ed., § 16-2502.

## CASE NOTES

### **Publication costs.**

The right to change one's name is not so fundamental that it carries with it any derivative right to have the taxpayers pay for its

exercise if applicant cannot afford costs of publication. In re Holmes, 112 WLR 277 (Super. Ct. 1984).

### § 16-2503. Decree.

On proof of the notice prescribed by section 16-2502, and upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application.

(Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-2503.

1973 Ed., § 16-2503.



## CASE NOTES

## ANALYSIS

Discretion of court.

In general.

**Discretion of court.**

The use of the word “may” in the statute governing name change applications provides the court with discretion to grant the applicant a name change. In re Peter Robert Phillips, 131 WLR 1901 (Super. Ct. 2001).

A court’s discretion to grant the applicant a name change must be used by the judge in cases where a name change may incite or offend the rights of other people. In re Peter Robert Phillips, 131 WLR 1901 (Super. Ct. 2001).

Allowing a name change to “Jesus Christ” could serve to both offend people and incite violence or protest and, thus, superior court, in the exercise of its statutory discretion and inherent power, would deny applicant a name change to prevent the name revered by a third of the world’s population to satisfy the vanity of

an individual complainant. In re Peter Robert Phillips, 131 WLR 1901 (Super. Ct. 2001).

**In general.**

Applicant for change of name was entitled to hearing and opportunity to present proof of publication. In re Phillips, 871 A.2d 513, 2005 D.C. App. LEXIS 147 (2005).

Applicant for change of name is required by statute to be a resident of the District of Columbia, to set forth the name desired to be assumed and the reasons therefor, to file notice of the application, and to publish such notice in a newspaper in general circulation once a week for three consecutive weeks. In re Phillips, 871 A.2d 513, 2005 D.C. App. LEXIS 147 (2005).

The trial court should not have considered the legal necessity of applicant’s name change as a basis for denying his in forma pauperis application in proceedings to change his name. D.C. Code 1981, §§ 15-712(a), 16-2503. In re Turkowski, 741 A.2d 406, 1999 D.C. App. LEXIS 283 (1999).

CHAPTER 27. NEGLIGENCE CAUSING DEATH.

Sec.

16-2701. Liability; damages; prior recovery as precluding action.

Sec.

16-2702. Party plaintiff; statute of limitations.  
16-2703. Distribution of damages.

**§ 16-2701. Liability; damages; prior recovery as precluding action.**

(a) When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married or domestic partnered, entitle the spouse or domestic partner, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

(b) The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse or domestic partner and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse or domestic partner, the jury shall allocate the portion of its verdict payable to the spouse or domestic partner and next of kin, respectively, according to the finding of damage to the spouse or domestic partner and next of kin. If, in a particular case, the verdict is deemed excessive, the trial judge or the appellate court, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life.

(c) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 560, Pub. L. 91-358, title I, § 145(j); Oct. 1, 1976, D.C. Law 1-87, § 21, 23 DCR 2544; Apr. 4, 2006, D.C. Law 16-79, § 4(h), 53 DCR 1035.)

**Cross references.** — Common carrier liability, see § 35-301 et seq.

Survival of rights of action, see § 12-101 et seq.

Workers' compensation, see § 32-1501 et seq.

**Prior Codifications.** — 1981 Ed., § 16-2701.

1973 Ed., § 16-2701.

**Effect of amendments.** — D.C. Law 16-79, rewrote section, which had read as follows: "When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act,

neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is married, entitle the spouse, either separately or by joining with the injured person, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony."The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin



of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the appellate court, on appeal of the cause, may order a reduction of the verdict. An action

may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life."

**Legislative history of Law 1-87.** — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 16-2341.

**Legislative history of Law 16-79.** — For Law 16-79, see notes following § 16-571.

## CASE NOTES

### ANALYSIS

Admissibility of evidence.  
Conspiracy.  
Construction and application.  
Construction with federal law.  
Contributory negligence.  
Damages.  
Default judgment.  
Defenses.  
Doctor/patient confidentiality.  
Duty.  
Election of remedies.  
Estoppel.  
In general.  
Intervening and superseding causes.  
Jurisdiction.  
Law governing.  
Notice.  
Persons entitled to sue.  
Persons liable.  
Presumptions and burden of proof.  
Public officials.  
Public services.  
Questions of law or fact.  
Review.  
Statute of limitations.  
Sudden emergency.  
Suicide.  
Weight and sufficiency of evidence.

### Admissibility of evidence.

Personal representative bringing survival and wrongful death action against electric company was entitled to be compensated for attorney fees and costs incurred in defending electric company's motion for summary judgment and in bringing motion for sanctions where electric company inadvertently or negligently failed to discover documents, earlier disclosure of which would have made electric company's filing of pending motion for summary judgment unlikely, but was not entitled to expenses of potential additional discovery, which would have been pursued even if the matter had been revealed earlier. D.C. Code 1981, §§ 12-101 et seq., 16-2701 et seq.; Fed.R.Civ.Proc. Rule 37(d), 18 U.S.C. Long v. District of Columbia, 110 F.R.D. 1, 1985 U.S. Dist. LEXIS 19124 (1985).

Admission of testimony of legal expert that attorneys' failure to consult or secure expert testimony from OB/GYN specialist and from economist violated standard of care for attorneys in medical malpractice/wrongful death cases was proper in legal malpractice action; medical experts whom attorneys consulted advised of necessity of consulting with experts in these medical fields, and attorneys' own legal expert testified that his notes indicated that attorneys recognized need to consult with such experts. Waldman v. Levine, 544 A.2d 683, 1988 D.C. App. LEXIS 127 (1988).

In action for wrongful death, trial court properly admitted expert testimony concerning decedent's potential income despite contention that, because decedent's employer went out of business two years after his death, expert should not have been allowed to project any specific earnings for decedent after that date. D.C. Code 1981, § 16-2701. Doe v. Binker, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Trial court, in suit by widow and children of individual shot by police detective against the District of Columbia under the Wrongful Death Act and survival statute, did not abuse its discretion in admitting circumstances leading up to the shooting. D.C. Code 1973, §§ 11-921, 12-101, 16-2701. District of Columbia v. White, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

### Conspiracy.

As to extent of civil liability, once civil conspiracy has been formed, all its members are liable for injuries caused by act pursuant to or in furtherance of conspiracy; conspirator need not participate actively or benefit from wrongful action in order to be found civilly liable, and he need not even have planned or known about injurious action so long as purpose of tortious action was to advance overall object of conspiracy. Halberstam v. Welch, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Conspirator can be civilly liable for injury even if he neither planned nor knew about particular overt act that caused injury, so long as purpose of act was to advance overall object of conspiracy. Halberstam v. Welch, 705 F.2d

472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Where burglar's live-in companion agreed to participate in unlawful course of action of burglar, burglar's murder of resident of home during course of attempted burglary, which was reasonably foreseeable consequence of burglary scheme, was sufficient basis for imposing tort liability on live-in companion according to law of civil conspiracy. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Gas station franchisor's claim that franchisee failed to honor his right of first refusal prior to selling gas station, in violation of District of Columbia's Retail Service Station Amendment Act (RSSA) could not form basis for civil conspiracy claim, since claim asserted franchisee's direct liability, rather than any vicarious liability. *D.C. Oil, Inc. v. ExxonMobil Oil Corp.*, 746 F.Supp.2d 152, 2010 U.S. Dist. LEXIS 115193 (2010).

Under District of Columbia law, civil conspiracy provided a basis of liability for Islamic Republic of Iran and a senior official of the Iranian government for wrongful death of U.S. national killed in a terrorist bombing of passenger bus in Israel; agreement between terrorist organization that committed the attack and Iranian defendants to commit terrorist activities in furtherance of the goals of eradicating the Jewish state of Israel and promoting Islamic ideology could be inferred from the comprehensive financial support and training that Iran provided to organization. *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 2006 U.S. Dist. LEXIS 13792 (2006).

### Construction and application.

A viable unborn child, which would have been born alive but for the negligence of defendant, is a "person" within meaning of Wrongful Death Statute. D.C. Code § 16-2701. *Simmons v. Howard University*, 323 F. Supp. 529, 1971 U.S. Dist. LEXIS 14923 (1971).

Viable fetus negligently injured en ventre sa mere is a "person" within meaning of wrongful death and survival statutes and, hence, fatal prenatal injury to otherwise viable fetus is actionable under those statutes. D.C. Code 1981, §§ 12-101, 16-2701. *Greater Southeast Community Hospital v. Williams*, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

As derogations from the common law, survival and wrongful death statutes must be strictly construed. D.C. Code §§ 12-101, 16-2701. *Waldon v. Covington*, 415 A.2d 1070, 1980 D.C. App. LEXIS 303 (1980).

### Construction with federal law.

Because the injuries causing the deaths of American servicemen occurred in a bombing in Beirut, Lebanon, wrongful-death claims

against state sponsors of terrorism would be treated as though pled under Foreign Sovereign Immunities Act (FSIA) terrorism exception, not D.C. Wrongful Death Act. *Valore v. Islamic Republic of Iran*, 700 F.Supp.2d 52, 2010 U.S. Dist. LEXIS 31259 (2010).

Evidence that the terrorist group Hezbollah was directly responsible for the bombing of the Israeli embassy in Argentina in which plaintiffs' decedent was killed, and that the Islamic Republic of Iran and its Ministry of Information and Security (MOIS) provided material support that made the attack possible, was sufficient to demonstrate Iran's liability in wrongful death claim in action under the Foreign Sovereign Immunities Act (FSIA). *Ben-Rafael v. Islamic Republic of Iran*, 540 F.Supp.2d 39, 2008 U.S. Dist. LEXIS 13505 (2008).

District of Columbia's wrongful death statute provided a valid basis for wrongful death claim in action, under the Foreign Sovereign Immunities Act (FSIA), arising out of the terrorist bombing of the Israeli embassy in Argentina. *Ben-Rafael v. Islamic Republic of Iran*, 540 F.Supp.2d 39, 2008 U.S. Dist. LEXIS 13505 (2008).

### Contributory negligence.

Elevator rider who fell down elevator shaft to her death when she attempted to get out of elevator that had stalled between floors was contributorily negligent, and thus rider's parents could not recover for defendants' alleged negligent failure to properly maintain and safely operate the elevator; rider was aware of gap below elevator cab, and rider was told that help was on the way and that she should stay in elevator. *Phillips v. Fujitec Am., Inc.*, 3 A.3d 324, 2010 D.C. App. LEXIS 506 (2010).

### Damages.

While certain factors, e. g., projected future income of the decedent, may be relevant to damages under both the Survival Act and the Wrongful Death Act, double recovery for the same elements of damage are to be avoided. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Under District of Columbia Wrongful Death Act, widow of helicopter crash victim was not entitled to damages for loss of consortium removal of gender-specific language from statute did not expand cause of action to allow surviving spouse to recover damages which were not recoverable under earlier version of Act. D.C. Code 1981, §§ 12-101, 16-2701 to 16-2703. *Joy v. Bell Helicopter Textron*, 999 F.2d 549, 1993 U.S. App. LEXIS 19063 (C.A.D.C. 1993).

In wrongful death action in which liability was established, recovery was not precluded on ground that definite dollar values were not established with reference to the factors enter-



ing into a verdict. D.C. Code § 16-2701. *Elliott v. Michael James, Inc.*, 559 F.2d 759, 1977 U.S. App. LEXIS 13520 (C.A.D.C. 1977).

Wrongful Death Act does not authorize compensation for grief caused surviving spouse and next of kin. D.C. Code §§ 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Proper recovery under the Wrongful Death Act is principally the amount of financial loss to the surviving spouse and next of kin; such share is customarily determined by first ascertaining the annual share of each in the deceased's earnings multiplied by the appropriate period of years, i.e., if the respective life expectancy of the spouse and next of kin is less than the work life expectancy of deceased each is limited to recovery for the years of his or her life expectancy and if the life expectancy of the spouse or next of kin is greater than that of the deceased each is limited to recovery for the period of deceased's work life expectancy and any part of each share is to be discounted to present worth on showing that such part would have been utilized for investment purposes. D.C. Code §§ 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Where evidence in suit under Wrongful Death Act and the Survival Statute established that discounted present value of decedent's probable future net income amounted to \$186,800, award of \$65,000 under both statutes did not amount to prohibited double recovery. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Marked decline in dollar value of Brazilian money was not cause for disregarding Brazil's limitation on damages recoverable for death sustained in airplane collision occurring there, as applied in suit instituted in District of Columbia, under Brazilian aviation accident death statute, against Brazilian corporation, as assignee of owner of one aircraft involved, for death of Maryland resident while a passenger in other aircraft involved. D.C. Code 1961, §§ 11-521(a), 13-334(a), 16-2701. *Tramontana v. S. A. Empresa De Viacao Aerea Rio Grandense*, 350 F.2d 468, 1965 U.S. App. LEXIS 5289 (C.A.D.C. 1965), writ of certiorari denied by 383 U.S. 943, 86 S. Ct. 1195, 16 L. Ed. 2d 206, 1966 U.S. LEXIS 2032 (1966).

Award against United States of \$1,033,192.00 for lost income was reasonable, under District of Columbia's Wrongful Death Act, to wife of Army hospital patient who was being treated for Achilles tendon rupture, and who died as a result of deep venous thrombosis (DVT) when government physician had failed to warn him of possibility of condition; patient was receiving both a military pension and Social Security benefits and amount of award took

into consideration patient's age, life expectancy, and discount for present value of award. *Burton v. United States*, 668 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 104029 (2009).

Genuine issue of material fact existed regarding widow's damages for adult children's lost parental services, precluding summary judgment on widow's claim against hospital and physicians under District of Columbia Wrongful Death Act. *Himes v. Medstar-Georgetown Univ. Med. Ctr.*, 753 F.Supp.2d 89, 2010 U.S. Dist. LEXIS 126454 (2010).

Widow of decedent was not barred from recovering damages from hospital and physicians under District of Columbia Wrongful Death Act for adult children's lost parental services; Act's text did not distinguish among potential beneficiaries on basis of their age or whether they were seeking damages for lost parental services. *Himes v. Medstar-Georgetown Univ. Med. Ctr.*, 753 F.Supp.2d 89, 2010 U.S. Dist. LEXIS 126454 (2010).

Widow was not entitled to leave to file surreply on motion for summary judgment based on contention that hospital and physicians argued for first time in reply that widow's Wrongful Death Act claim could not include value of services to adult children of deceased because claim was limited to monetary valuation of loss of services offered by widow's economic expert, where actual claim by hospital and physicians was that expert's estimate should be allocated among adult children and widow, as opposed to adult children and widow each receiving total amount of estimate. *Himes v. Medstar-Georgetown Univ. Med. Ctr.*, 753 F.Supp.2d 89, 2010 U.S. Dist. LEXIS 126454 (2010).

Under District of Columbia law, successful plaintiff in survival action may recover funeral expenses, compensation for pain and suffering, and whatever economic damages she can prove. *Jefferson v. E. D. Etnyre & Co.*, 300 F.Supp.2d 109, 2004 U.S. Dist. LEXIS 1304 (2004).

Family of American citizen who was president of university in Lebanon and was murdered as an act of terrorism sponsored by Islamic Republic of Iran was entitled to collective recovery of damages in the amount of \$23,500,000 for loss of society and companionship, and for mental anguish, based on fact that the death was unforeseen, sudden, violent, malicious, and took place on campus, a place long associated by the family with peace and tranquility, and on family members' testimony that they had vivid recollections of the horrific moment they first learned of the murder and continued to experience intense sorrow and anguish at the remembrance of the death. *Kerr v. Islamic Republic of Iran*, 245 F.Supp.2d 59, 2003 U.S. Dist. LEXIS 2238 (2003).

In computing awards for loss of consortium and solatium, the court considers the following

factors: (1) whether the decedent's death was sudden and unexpected; (2) whether the death was attributable to negligence or malice; (3) whether the claimants have sought medical treatment for depression and related disorders resulting from the decedent's death; (4) the nature, or closeness, of the relationship between the claimant and the decedent; and (5) the duration of the claimant's mental anguish in excess of that which would have been experienced following the decedent's natural death. *Kerr v. Islamic Republic of Iran*, 245 F.Supp.2d 59, 2003 U.S. Dist. LEXIS 2238 (2003).

Under District of Columbia law, a right of action for loss of consortium did not extend to a spouse's death. *Johnson v. Mercedes-Benz, USA, LLC*, 182 F.Supp.2d 58, 2002 U.S. Dist. LEXIS 862 (2002).

Extraordinary child-rearing expenses are not recoverable under District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Under District of Columbia law, patient could recover extraordinary child-rearing expenses under common law cause of action for wrongful birth in action against physician. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Patient who sued physician for wrongful birth under District of Columbia common law, under theory that drug which physician prescribed for her while she was pregnant caused child's birth defects and eventual death, was not required to mitigate her damages, including extraordinary child-rearing expenses, through abortion. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Claims for emotional distress sustained by child's survivors, and those extraordinary child rearing expenses caused by the child's chronic birth defects which eventually led to his death were not recoverable under the District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 113 F.Supp.2d 44, 2000 U.S. Dist. LEXIS 14358 (2000).

Under District of Columbia Wrongful Death Act, proper recovery is amount of financial loss suffered by spouse and next of kin as result of decedent's death; there is no provision for recovery by decedent's survivors for mental suffering, grief, or anguish. D.C. Code 1981, § 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

Recovery under District of Columbia Wrongful Death Act is calculated by determining annual share of plaintiff in deceased's earnings multiplied by deceased's work life expectancy and discounted to present worth, plus costs of decedent's funeral and last illness. D.C. Code § 16-2701 et seq. *Graves v. United States*, 517 F. Supp. 95, 1981 U.S. Dist. LEXIS 9681 (1981).

In action under federal and District of Columbia statutes governing survival of actions and allowing wrongful death actions brought by survivors and personal representatives of former Chilean ambassador and his passenger against the Republic of Chile and various Chilean employees in which plaintiffs established defendants' liability for victims' bombing deaths which occurred as they drove to work together, plaintiffs were entitled to compensation for victims' pain and suffering, an award of punitive damages, and damages for wrongful death. D.C. Code §§ 12-101, 16-2701; 18 U.S.C. § 1606. *Letelier v. Republic of Chile*, 502 F. Supp. 259, 1980 U.S. Dist. LEXIS 14629 (1980).

In action under federal and District of Columbia statutes governing survival of actions and allowing wrongful death actions brought by survivors and personal representatives of former Chilean ambassador and his passenger against the Republic of Chile and various Chilean employees in which plaintiffs established defendants' liability for victims' bombing deaths occurring as they drove to work together, widower of passenger, who was also a passenger in the car and witnessed the explosion, established right to award for pain and suffering, but did not establish right to psychiatric therapy expenses incurred as a proximate result of defendants' acts. D.C. Code §§ 12-101, 16-2701; 18 U.S.C. § 1606. *Letelier v. Republic of Chile*, 502 F. Supp. 259, 1980 U.S. Dist. LEXIS 14629 (1980).

District of Columbia wrongful death act empowers trial court to act sua sponte in exercise of its sound discretion to order reduction of verdict, without time limitation, and authorizes reduction of amount of damages directly without necessity of requiring remittitur as condition to denial of new trial. D.C. Code § 16-2701. *Thomas v. Potomac Electric Power Co.*, 266 F. Supp. 687, 1967 U.S. Dist. LEXIS 9060 (D.D.C.1967).

Award of \$155,000 for death of 26-year-old father of two who had recently graduated from college and was planning to work as teacher was excessive where it represented amount shown by actuarial testimony to be his probable future earnings in teaching profession, reduced to present worth, without reduction in light of vicissitudes of fortune, buffeting of fate, and uncertainties of life and health, and would be reduced to \$90,000. D.C. Code § 16-2701. *Thomas v. Potomac Electric Power Co.*, 266 F. Supp. 687, 1967 U.S. Dist. LEXIS 9060 (D.D.C.1967).

Under the District of Columbia Wrongful Death Act, the amounts recovered are the future contributions toward the maintenance of the spouse and next of kin that the deceased probably would have made had the act which forms the basis of the actions not occurred. *Schoenborn v. Wash. Metro. Area Transit Auth.*,



247 F.R.D. 5, 2007 U.S. Dist. LEXIS 86225 (2007).

Generally, under the District of Columbia Wrongful Death Act, the amount recoverable is determined by first ascertaining the annual share of each beneficiary in the deceased's earnings multiplied by the appropriate period of years not to exceed the period of the deceased's work-life expectancy. *Schoenborn v. Wash. Metro. Area Transit Auth.*, 247 F.R.D. 5, 2007 U.S. Dist. LEXIS 86225 (2007).

In wrongful death or survival action, decedent's next of kin or personal representative may recover amount based on decedent's probable net future earnings discounted to present value. 42 U.S.C. § 1983; D.C. Code 1981, §§ 12-101, 16-2701. *Hamilton v. District of Columbia*, 152 F.R.D. 426, 1994 U.S. Dist. LEXIS 320 (1994).

Evidence was not sufficient to support finding that police officers shot perpetrator with an evil motive or actual malice to support award of punitive damages in action brought by representatives of deceased perpetrator's estate which alleged officers used excessive force in killing perpetrator after perpetrator held his mother hostage at knifepoint; no evidence existed that the officers knew perpetrators or had ever had any contact with him before they entered apartment where he held mother hostage, and no inference of malice was evident in the manner of entry by the officers or in the initial shots fired at perpetrator. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Trial judge did not abuse her discretion in ordering remittitur that reduced compensatory damages from \$2,149,998 to \$180,000 in wrongful death and survival actions brought by representatives of deceased perpetrator's estate who claimed officers used excessive force in killing perpetrator after holding mother hostage at knifepoint; award totaling \$2,149,998 was out of proportion to perpetrator's very brief but real pain and suffering and to the loss of services and care, education, training, guidance and parental advice this particular perpetrator could have been expected to have given his daughter for five years until she turned eighteen. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Recoverable damages under District of Columbia's Wrongful Death Act include: (1) pecuniary losses resulting from the loss of financial support the decedent could have been expected to provide the next of kin had he lived; and (2) the value of lost services, such as care, education, training, and personal advice. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

District of Columbia law governing damages in wrongful death actions, rather than Maryland law, applied to decedent's estate's wrong-

ful death action against the District of Columbia after decedent, a Maryland resident, was shot and killed by off-duty police officer in the District; place of injury and death was the District of Columbia, conduct that resulted in decedent's wrongful death occurred in the District, person responsible for the shooting was employed by the District's police department, relationship to the events was centered in the District, and liability had been assessed under District's Wrongful Death Act. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

In addition to allowing recovery for pecuniary losses resulting from the loss of financial support the decedent could have been expected to provide his next of kin, recovery under Wrongful Death Act is allowed for the value of services the decedent would have provided, including loss of care, education, training, guidance and personal advice. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

It was not plain error for trial court to permit the jury to award children of driver, who was killed when her vehicle was struck by another vehicle being pursued in police chase, damages for loss of maternal services under Wrongful Death Act. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Trial court, which had already reduced jury's damages awards for pain and suffering and pre-death mental anguish from \$1,500,000 for passenger's estate and \$1,000,000 for driver's estate to \$500,000 and \$350,000 respectively, did not abuse its discretion in not further reducing the verdicts for pain and suffering and pre-death mental anguish for purposes of claims brought by estates of passenger and driver, who were killed when their vehicle was struck by the driver of another vehicle who was being pursued in a high speed chase by police; witness testified that driver was still alive after she was thrown out of car and that she appeared to be in "a lot of pain," and he testified that passenger was moaning and in pain. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Wrongful Death Act provides remedy for close relatives, who might have been entitled to maintenance and the like from decedent, to recover compensatory damages from tort-feasor for wrongful death. D.C. Code 1981, § 16-2701. *Moattar v. Foxhall Surgical Assocs.*, 694 A.2d 435, 1997 D.C. App. LEXIS 80 (1997).

Jury verdict of \$1,030,002 under Survival Act in suit arising from death of detainee in District of Columbia jail was excessive, even though there was evidence that detainee had been victim of gang rape by fellow detainees and had been repeatedly sprayed in his face with chemical compounds used to clean showers, in light

of closing argument by counsel for detainee's estate emphasizing only pain and suffering detainee sustained afterwards while locked in cell and suffering from asthmatic bronchospasm. *Finkelstein v. District of Columbia*, 593 A.2d 591, 1991 D.C. App. LEXIS 159 (1991).

Two main elements form basis for recovery under Wrongful Death Act: first element compensates for pecuniary loss, calculated as annual share of decedent's dependents in decedent's earnings multiplied by decedent's work life expectancy, and discounted to present value, while second element compensates for value of services lost to family as result of decedent's death. D.C. Code 1981, § 16-2701. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Damages in wrongful death action should be measured from date of decedent's death, and not some later date, on basis of relevant factors. D.C. Code 1981, § 16-2701. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

In wrongful death action, trial court erred in granting remittitur where, in examining jury verdict for excessiveness, trial court only considered loss of financial support and not value of services lost to family as a result of death. D.C. Code 1981, § 16-2701. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Survival statute does not purport to compensate individual members of decedent's family for loss of economic benefit which they might reasonably have expected to receive from decedent in form of support, services or contributions during remainder of his lifetime, nor does it seek to compensate family members for lost incidents of family association or the grief they have suffered. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

When jury finds particular quantum of damages and trial court refuses to disturb jury's findings on motion for new trial, appellate court will order new trial only when award is so inadequate as to indicate prejudice, passion or partiality on part of jury, or where it must have been based on oversight, mistake or consideration of improper element. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

In action under survival statute to recover for death of 16-year-old boy, who had not yet chosen a profession, award of \$5,200 was, although insubstantial, not grossly inadequate. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

In determining award under survival statute upon death of person who has not yet made his choice of livelihood, future lost earnings must be determined on basis of potential rather than demonstrated earning capacity and that potential must be extrapolated from individual characteristics, such as age, sex, socioeconomic sta-

tus, educational attainment, intelligence and dexterity. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Under survival statute providing for action to be brought by legal representative of deceased, damages are limited to compensation to estate itself for loss of prospective economic benefit in form of decedent's prospective net lifetime earnings, discounted to present worth. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Damages recovered for wrongful death are not "assets of decedent's estate" and, except for expenses of last illness and burial, may not be appropriate to payment of debts or liabilities of decedent; rather, any amount recovered inures to benefit of decedent's next of kin, and personal representative acts only as a trustee on behalf of the decedent's family. D.C. Code §§ 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Hedonic damages, damages for the loss of life's pleasures, are not recoverable under District of Columbia tort law. *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

### **Default judgment.**

Trial court could set aside default judgments entered against police officers in action brought by mother of epileptic shooting victim, where officers requested representation by police department general counsel within days of being served, officers notified general counsel within days of learning of default judgments, and there was no discernible prejudice to mother from time delays. Civil Rule 55(c, e). *District of Columbia v. Evans*, 644 A.2d 1008, 1994 D.C. App. LEXIS 108 (1994).

### **Defenses.**

To effect an arrest, rule is that officer has right to use such force as under circumstances appears reasonably necessary and trier of fact must judge necessity in light of circumstances as they reasonably appear to officer at time of arrest. *Houston v. United States*, 566 F. Supp. 1125, 1983 U.S. Dist. LEXIS 16047 (1983).

In effecting arrest, officer is justified in using such force as under circumstances appears reasonably necessary to maintain custody or prevent escape. *Houston v. United States*, 566 F. Supp. 1125, 1983 U.S. Dist. LEXIS 16047 (1983).

Judicially developed defenses of contributory negligence and assumption of risk do not bar recovery when they conflict with the purposes of statutes or regulations allegedly violated by the allegedly negligent person. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).



Neither contributory negligence nor assumption of risk precluded recovery based on use of excessive force by police officer during arrest where both statute and police regulation prohibited officer from using excessive force. D.C. Code 1981, § 4-176. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

### Doctor/patient confidentiality.

Under statute providing that no physician or surgeon shall be permitted without consent of patient or his legal representatives to disclose any confidential information acquired in attending patient professionally, the duly qualified personal representative, when there is one, is deceased patient's "legal representative" for purposes of gathering information with a view to prosecuting a wrongful death claim. D.C. Code §§ 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Decedent's son and only child had so vital an identification with any cause of action potentially arising upon his father's negligently caused demise as would enable him to waive the physician-patient privilege as to pertinent medical data where there was no personal representative to act in his behalf so that the assertion of the physician-patient privilege did not defeat son's right to inspect decedent's medical report or establish physician's and hospital's duty to preserve confidentiality of records against all save decedent's legal representative. D.C. Code §§ 12-101 to 12-104, 12-301(8), 14-307(a, b), 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

### Duty.

Veterans Administration (VA) hospital did not breach standard of care under District of Columbia law by failing to notify police when voluntary mental patient left hospital before discharge and against medical advice, and, thus, hospital could not be liable for suicide of patient who suffered from paranoid schizophrenia; although patient had expressed some suicidal ideation, he had no suicidal intent or plan and was not imminent danger to himself or others before he shot himself. D.C. Code 1981, §§ 16-101, 16-2701 to 16-2703; 18 U.S.C. §§ 1346(b), 2671-2680. *Dutcher v. United States*, 736 F. Supp. 1142, 1990 U.S. Dist. LEXIS 5938 (1990), affirmed without opinion by 923 F.2d 200, 287 U.S. App. D.C. 377, 1990 U.S. App. LEXIS 23298 (1990).

Once District of Columbia installs traffic safety control device, it has duty to maintain device in reasonably safe condition. Washing-

ton Metro. Area Transit Authority v. Davis, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

In order to convert Government's general duty owed to public into special duty owed to individual, plaintiff allegedly injured by governmental negligence must allege and prove direct or continuing contact between injured party and governmental agency or official, and justifiable reliance on part of injured party. *Klahr v. District of Columbia*, 576 A.2d 718, 1990 D.C. App. LEXIS 142 (1990).

### Election of remedies.

District of Columbia Survival Act compensates estate for injuries caused to decedent while Wrongful Death Act gives right of action to survivor who suffers loss as result of death of decedent, but plaintiff needs viable cause of action at time of decedent's death under both statutes. D.C. Code 1981, §§ 12-101, 16-2701. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Under District of Columbia law, negligent conduct resulting in death gives rise to two independent rights of action under the Wrongful Death Act and under the Survival Act, upon each of which damages may be sought. D.C. Code §§ 12-101 et seq., 16-2701 et seq. *Semler v. Psychiatric Institute of Washington, D. C., Inc.*, 575 F.2d 922, 1978 U.S. App. LEXIS 11991 (C.A.D.C. 1978).

Where husband and father's death was result of defendants' negligence, recovery could be had under both the Survival Statute and the Wrongful Death Act; however, double recovery for the same elements of damage was to be avoided. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Negligent conduct resulting in death may generate simultaneously two independent bases for action, one under the Survival Act and the other under the Wrongful Death Act, upon each of which damages may be sought. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Negligent act causing death can give rise simultaneously to separate and independent claims under Wrongful Death Act and under Survival Act. D.C. Code §§ 12-101, 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

A plaintiff is entitled to simultaneously maintain two separate causes of action upon death of tort victim, one under the Wrongful Death Act and the other under the Survival Act. D.C. Code §§ 12-101, 16-2701. *Waldon v. Covington*, 415 A.2d 1070, 1980 D.C. App. LEXIS 303 (1980).

Remedies provided by Survival Act and the Wrongful Death Act are not mutually exclusive and may be pursued simultaneously. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Negligent conduct resulting in death may give rise to two independent claims: one under the Survival Act, which allows recovery of damages, excluding pain and suffering, arising from personal injury to the decedent, and another under the Wrongful Death Act which allows recovery for pecuniary loss to the decedent's next of kin, i.e., loss of support occasioned by the death. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

A cause of action exists under both the survival and wrongful death statutes for the death of a viable fetus and under the survival statute, recovery may include lost future earnings. *Williams v. Crooks*, 111 WLR 773 (Super. Ct. 1983).

### Estoppel.

Where plaintiff initially had option of suing for wrongful death of decedent, a Virginia resident, in Virginia or in District of Columbia which was the residence of defendants, plaintiff by initially suing for wrongful death in federal court in Virginia and recovering judgment was barred under doctrine of res judicata from subsequently suing for same wrongful death in federal court in District of Columbia, notwithstanding claim that District of Columbia action was based on its Survival Act, while the Virginia action was based on its Wrongful Death Act. Code Va.1950, § 8-633 et seq.; D.C. Code §§ 12-101 et seq., 16-2701 et seq.; U.S. Const. art. 4, § 1. *Semler v. Psychiatric Institute of Washington, D. C., Inc.*, 575 F.2d 922, 1978 U.S. App. LEXIS 11991 (C.A.D.C. 1978).

Adverse judgment in suit by widow, as sole beneficiary, to collect on policy which was payable only if deceased had sustained injury through external violent and accidental means, rendered after evidence disclosed that deceased had suffered a stroke independent of and immediately prior to automobile collision, did not collaterally estop widow, as administratrix of estate of deceased, from bringing an action on her own behalf and behalf of her minor children for wrongful death of deceased against owner and driver of taxicab with which deceased's automobile had collided. D.C. Code §§ 16-2701, 16-2702. *Smith v. Hood*, 396 F.2d 692, 1968 U.S. App. LEXIS 7136 (C.A.D.C. 1968).

Jury's verdict for defendants District of Columbia and police officers on assault and battery claim did not preclude possible finding of liability attributable to negligence, in action brought by mother of epileptic who was shot and killed by officers. *District of Columbia v.*

*Evans*, 644 A.2d 1008, 1994 D.C. App. LEXIS 108 (1994).

Arrestee's conviction for criminal assault on police officer who shot him during the arrest did not collaterally estop him from claiming that police officer used excessive force. D.C. Code 1981, § 22-505. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

Order dismissing with prejudice wrongful death action for failure to prosecute operated as an adjudication of issues on merits and, absent a timely appeal, became law of case. D.C. Code SCR, Civil Rule 41(b). *Colbert Refrigeration Co. v. Edwards*, 356 A.2d 331, 1976 D.C. App. LEXIS 518 (1976).

### In general.

Under law of District of Columbia, a "survival action" is a negligence action pursued by estate of decedent victim and all that need be proven are ordinary elements of negligence, but a "wrongful death action" is an action pursued by a survivor in his capacity as a victim himself, requiring proof of both the underlying negligence action as well as injury to the survivor. *Burton v. United States*, 668 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 104029 (2009).

District of Columbia does not recognize comparative negligence. *Johnson v. Mercedes-Benz, USA, LLC*, 182 F.Supp.2d 58, 2002 U.S. Dist. LEXIS 862 (2002).

District of Columbia's Wrongful Death Statute creates cause of action only for deaths caused by injuries occurring within District of Columbia. D.C. Code 1981, § 16-2701. *Perry v. Criss Bros. Iron Works, Inc.*, 741 F. Supp. 985, 1990 U.S. Dist. LEXIS 10601 (1990).

The District of Columbia's Wrongful Death Act is designed to provide a remedy whereby close relatives of the deceased who might have expected maintenance or assistance from the deceased had he lived, may recover compensation from the wrongdoer commensurate with the loss sustained. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

Wrongful Death Act is designed to provide a remedy whereby close relatives of the deceased who might have expected maintenance or assistance from the deceased, had he lived, may recover compensation from the wrongdoer commensurate with the loss sustained. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Cause of action for wrongful death arises only if the deceased could have brought cause of action for injuries if death had not ensued, and cause of action for injuries survives deceased's death only if cause of action accrued prior to death. D.C. Code 1981, §§ 12-101, 16-2701. *Greater Southeast Community Hospital v. Wil-*



liams, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

The Wrongful Death Act creates an entirely new right of action in favor of designated beneficiaries providing a remedy for close relatives to the deceased, who might naturally have expected maintenance or assistance from the deceased had he lived, with proper recovery based on the pecuniary benefits that the statutory beneficiaries might reasonably be expected to have derived from the deceased had he lived. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

A right of action exists in the District of Columbia for the wrongful death of another only through the "grace of legislative enactment"; and the statutory scheme must therefore be strictly construed. *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

#### Intervening and superseding causes.

Under District of Columbia law, a defendant can be held liable for damages resulting from intervening acts of third parties if danger of an intervening negligent or criminal act should have reasonably been anticipated and protected against. *Romero v. National Rifle Assn.*, 749 F.2d 77, 1984 U.S. App. LEXIS 16021 (C.A.D.C. 1984).

#### Jurisdiction.

Where, in diversity action brought by father of murdered girl against District of Columbia parole officer and District itself to recover damages under District's death and survival statutes, joinder of District did not destroy complete diversity, claims against District derived from nucleus of operative fact common with claim against parole officer, and exercise of pendent jurisdiction over suit against District would avoid duplicative relitigation and result in no unfairness to District, trial court acted properly in exercising pendent jurisdiction over District and did not abuse its discretion in retaining such jurisdiction after dismissal of claim against parole officer. 18 U.S.C. § 1332; D.C. Code §§ 12-101, 16-2701 to 16-2703. *Rieser v. District of Columbia*, 563 F.2d 462, 1977 U.S. App. LEXIS 12002 (C.A.D.C. 1977), modified en banc by 580 F.2d 647, 188 U.S. App. D.C. 384, 1978 U.S. App. LEXIS 11361 (1978).

In action against foreign government, alleging that it had ordered assassination of plaintiffs' decedent in the United States, district court would consider its subject-matter jurisdiction upon receipt of note from foreign government, even though default judgment had already been entered against foreign government. *Letelier v. Republic of Chile*, 488 F. Supp. 665, 1980 U.S. Dist. LEXIS 9246 (1980).

#### Law governing.

In wrongful death case, District of Columbia has increasingly applied an interest analysis

approach in determining the law applicable under which court identifies state policies underlying each law in conflict and decides which state policy would be advanced by having its law applied to facts at bar. D.C. Code §§ 12-101 et seq., 16-2701 et seq. *Semler v. Psychiatric Institute of Washington, D. C., Inc.*, 575 F.2d 922, 1978 U.S. App. LEXIS 11991 (C.A.D.C. 1978).

Under District of Columbia choice of law principles, the law of District of Columbia, rather than Israeli law, governed intentional infliction of emotional distress and survival claims brought against the Islamic Republic of Iran and the Iranian Ministry of Information and Security arising from death of U.S. citizen, who was abducted and executed by members of terrorist group while residing in Israel; although all the plaintiffs resided in Israel at the time of the abduction and execution, the United States' interest in guaranteeing redress to U.S. citizens was paramount. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 537 F.Supp.2d 85, 2008 U.S. Dist. LEXIS 14547 (2008).

Under District of Columbia choice of law principles, the law of Israel, rather than District of Columbia law, governed wrongful death claim against the Islamic Republic of Iran and the Iranian Ministry of Information and Security arising from death of U.S. citizen, who was abducted and executed by members of terrorist group; victim suffered injury and death in Israel and lived his entire life in Israel, and applying the D.C. wrongful death statute, with its geographical limitations, would prevent recovery. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 537 F.Supp.2d 85, 2008 U.S. Dist. LEXIS 14547 (2008).

Under District of Columbia choice of law rules, Maryland statute of limitations applied in wrongful death action brought against District of Columbia halfway house by personal representative of estate of Maryland resident murdered in Maryland by former inmate of halfway house; District of Columbia public policy was not clearly opposed to application of Maryland law, since application of District's wrongful death statute was limited to actions arising out of injury suffered within District. *Smith v. Hope Vill., Inc.*, 481 F.Supp.2d 172, 2007 U.S. Dist. LEXIS 26904 (2007).

Choice of law factor did not favor transfer of medical malpractice case from District of Columbia to District of Maryland, even though Maryland law applied to wrongful death claim, as District law applied to survival and loss of consortium claims. 18 U.S.C. § 1404(a); D.C. Code 1981 § 16-2701; Md.Code, Courts and Judicial Proceedings, §§ 3-901 to 3-904. *Stewart v. Capitol Area Permanente Medical Group, P.C.*, 720 F. Supp. 3, 1989 U.S. Dist. LEXIS 9701 (1989).

Law of District of Columbia permitting assessment of punitive damages was applicable to allegations of product liability against manufacturer of airplane which crashed on takeoff in Washington, D.C., even though Washington State made a considered choice not to allow assessment of punitive damages, given District of Columbia's significant interests and fact that manufacturer had more substantial relationship with District of Columbia than manufacturer generally has to site of injury in typical "fortuitous crash" cases. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., punitive damages law of state in which airline had principal place of business and state in which airline which performed deicing of airplane's wings had its principal place of business would not be applied in that allegedly tortious conduct occurred in neither of those states and states in which conduct occurred had greater interest in deterring conduct. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law controlled question of liability of airline and of airline which deiced airplane's wings for punitive damages, even though airport was located in Virginia. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In determining which jurisdiction's law applied to allegations of product liability against airplane manufacturer arising out of airplane crash in District of Columbia, contacts to be considered included site of injury, place where conduct occurred, parties' domiciles and place where parties' relationship was centered. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law governed allegations of products liability against airplane manufacturer in that interest of Washington State as manufacturer's principal place of business with regard to question of manufacturer's alleged products liability was not as great as interest of District of Columbia. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In determining which jurisdiction's law was applicable in consolidated actions arising out of airplane crash, mere fact that one jurisdiction numerically satisfied more contacts than another was not dispositive of question of which state had "most significant relationship" regarding issue. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Where highest court of Virginia recently reaffirmed its adherence to *lex loci delicti* rule, District of Columbia law governed all issues in action transferred from Virginia to District of Columbia when actions arising out of airplane crash in Washington, D.C., were consolidated. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Where orphans for whose benefit suit was brought had been en route to United States when they were killed and injured in Vietnam and suit was brought against United States, which had special role in design of plane that crashed, law of District of Columbia was applicable in view of fact that orphans had been permanently immigrating to United States and Government of Vietnam had been conquered and extinguished; no constitutional principle forbade application of District of Columbia law to case, and law of District would be applied in toto. U.S. Const. art. 1, § 8, cl. 17; D.C. Code §§ 12-101, 16-2701. In *re Air Crash Disaster near Saigon*, 476 F. Supp. 521, 1979 U.S. Dist. LEXIS 13080 (1975).

Virginia law, which prohibits actions for loss of consortium by husband for injuries to wife, and not District of Columbia law, which permits consortium claims by husbands, applied to widower's consortium claim arising out of alleged malpractice on widower's wife in Virginia; although both medical defendants were District of Columbia corporations, Virginia was residence of widower and his wife, alleged negligence occurred entirely in Virginia, and widower, unlike his wife, who was employed in District of Columbia, had no contact with District. Va.Code 1950, § 8.01-50 et seq.; D.C. Code 1981, § 16-2701 et seq. *Stutsman v. Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.*, 546 A.2d 367, 1988 D.C. App. LEXIS 105 (1988).

#### Notice.

While District of Columbia has duty to maintain roadways in reasonably safe condition, it cannot be held liable for injuries caused by dangerous condition on its streets unless it has notice, actual or constructive, of condition. *Washington Metro. Area Transit Authority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

District of Columbia was on constructive notice that stop sign was obstructed by foliage; though neither tree maintenance division or traffic unit had received complaints, foliage problem had existed for at least two years, area residents had notified their councilmember of problem and police had investigated three prior accidents at intersection, including one in which driver had not seen stop sign. *Washington Metro. Area Transit Authority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

#### Persons entitled to sue.

If a tort causes death, two interests have



been invaded: the first is the interest of the deceased in the security of his person and property and the personal representative of the deceased's estate may bring an action on behalf of the estate to recover for the invasion of that interest; the second is the impairment of the interests of the deceased's spouse and next of kin and they may recover pecuniary loss resulting from the death provided the personal representative of deceased's estate prevails in their behalf in the wrongful death action. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Under District of Columbia law, a mother claiming emotional distress for an injury to her child must either have sustained physical injury herself, or have been within the zone of danger where the injury to her child occurred. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Under District of Columbia law, given absence of allegation of physical damage or danger to patient herself, patient could not recover for her alleged emotional distress in action in which she alleged that physician negligently prescribed drug to her while she was pregnant, causing her child to be born with birth defects and eventually die. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Term "personal representative" as used in District of Columbia's Wrongful Death Act statute is limited to officially appointed executors and administrators. D.C. Code 1981, § 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

Parents of decedent, who was killed when an airplane struck his automobile, could not maintain action against airline under District of Columbia's Survival and Wrongful Death Act statutes, since neither parent qualified as decedent's personal representative and were not decedent's heirs under law of District of Columbia or California; furthermore, since parents' claimed only damages suffered by them rather than losses of decedent, they did not allege damages which were proper subject of survival action. D.C. Code 1981, §§ 12-101, 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

Where mother died in childbirth at full term and the conduct alleged to be negligent with respect to child was the failure to deliver the same alive, plaintiff was entitled to recover under the Wrongful Death Statute for death of his unborn child assuming that the facts developed at trial established fault on part of defendants. D.C. Code § 16-2701. *Simmons v. Howard University*, 323 F. Supp. 529, 1971 U.S. Dist. LEXIS 14923 (1971).

Wrongful Death Act creates a new right of action, upon death of injured person, for benefit

of his next of kin. D.C. Code § 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

Daughter's intervention as of right was warranted in wrongful death action, on behalf of decedent mother's estate, filed by step-father personal representative, under District of Columbia Wrongful Death Act, providing that damages would recompense spouse and next of kin, since daughter's interest would be impaired without intervention and would not be adequately represented by parties; daughter's post-hoc remedies by challenging damages award in probate court or by suing representative for breach of fiduciary duty would be insufficient to protect daughter due to difficulty of obtaining such relief, intervention would be convenience to daughter and conserve scarce judicial resources, and special circumstances of potential conflict regarding distributing prospective award between daughter and step-father representative who were seeking to recover from fixed sum of money demanded intervention. *Schoenborn v. Wash. Metro. Area Transit Auth.*, 247 F.R.D. 5, 2007 U.S. Dist. LEXIS 86225 (2007).

Wrongful Death Act creates a right in favor of the spouse and next of kin of a deceased person for damages arising out of a negligent act causing death. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Wrongful Death Act creates entirely new right of action in favor of designated beneficiaries; recovery under Act is based on pecuniary benefits that statutory beneficiaries might reasonably be expected to have derived from deceased had he lived. D.C. Code 1981, § 16-2701 et seq. *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

Wrongful death statute creates new cause of action for deceased's spouse and next of kin to recover for the pecuniary losses when deceased could have brought an action for injuries had he lived. D.C. Code 1981, § 16-2701. *Greater Southeast Community Hospital v. Williams*, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

Law partnership has no right of action for damages arising out of death of managing partner of law firm. D.C. Code 1981, § 16-2701 et seq. *Cole, Raywid & Braverman v. Quadrangle Development Corp.*, 444 A.2d 969, 1982 D.C. App. LEXIS 341 (1982).

The Survival Act permits a claim which accrued to a decedent before his death to be enforced after his death by his "legal representative"; on the other hand, the Wrongful Death Act creates a new cause of action which arises on the death of the decedent and is enforced by his "personal representative." D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of*

Columbia, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Although the term "personal representative" as used in the Wrongful Death Act is limited to qualified executors and administrators, a personal representative who brings an action under the Wrongful Death Act is a nominal party only and does not act in his capacity as executor or administrator. D.C. Code §§ 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Given that this section is a remedial act and is to be interpreted liberally to effectuate its purpose, it serves its purpose to include equitably adopted children in the definition of "next of kin"; an equitably adopted child should not be barred from bringing an action for wrongful death because a tortfeasor allegedly caused the death of the equitably adoptive parent and thus made it impossible to carry out the intent of the parent to adopt the child. *Cole v. Washington Hosp. Ctr.*, 124 WLR 1973 (Super. Ct. 1996).

### **Persons liable.**

Elements of aiding and abetting as means of establishing vicarious civil liability for tort include that party whom defendant aids must perform wrongful act that causes injury, that defendant must be generally aware of his role as part of overall illegal or tortious activity at time that he provides assistance, and that defendant must knowingly and substantially assist principal violation. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Aider abettor is liable for damages caused by main perpetrator, but that perpetrator, absent finding of conspiracy, is not liable for damages caused by aider abettor. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Suggestive words may be enough to create showing of civil liability when they plant seed of action and are spoken by person in apparent position of authority. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Vicarious civil liability can be based on acts of assistance as well as words of encouragement; furthermore, contributing activity itself need not be so obviously nefarious as cheering of beating or prodding someone to drive recklessly. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

If law enforcement officer uses any force in excess of that reasonably necessary to effect arrest or subdue prisoner, he would be liable for any injuries or death and damage suffered as a result thereof. *Hoston v. United States*, 566 F. Supp. 1125, 1983 U.S. Dist. LEXIS 16047 (1983).

Neither Foreign Sovereign Immunities Act, nor act of state doctrine would shield foreign

government from civil liability if it ordered assassination that took place in United States. 18 U.S.C. § 1605(a)(5). *Letelier v. Republic of Chile*, 488 F. Supp. 665, 1980 U.S. Dist. LEXIS 9246 (1980).

In wrongful death action, assuming arguendo that hospital center had a fiducial duty to a patient undergoing surgery in its operating rooms, such a duty cannot be ascribed to nontreating physicians who reviewed operating surgeon's performance at hospital's request after patient's death during surgery, but did not inform decedent's family of the outcome of their investigation. *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990).

### **Presumptions and burden of proof.**

Presumption of negligence arising from violation of traffic regulation is rebuttable presumption that may be overcome by sufficient competent evidence to justify finding that defendant did all that reasonable person who wished to comply with law would do; however, more is required than motorist's claim that he or she did not see hazard that was plainly there to be seen. *Washington Metro. Area Transit Authority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

In order to recover damages for suicide of another, plaintiff must show more than that the alleged negligent incident started a chain of circumstances that led to suicide; plaintiff must prove that the defendant's action caused a mental condition, illness, or insanity which resulted in the decedent having an irresistible or uncontrollable impulse to commit suicide in the sense that the decedent could not have decided against and refrained from killing himself and that, because of such uncontrollable impulse, the decedent committed suicide. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

### **Public officials.**

Alleged negligent misrepresentation of fact by District police officers to parents of two minor children, that the children were safely out of the burning house, so that parents abandoned their rescue efforts, did not make the children's condition worse, and thus, the public duty doctrine precluded an action against the District under the survival and wrongful death statutes. *Miller v. District of Columbia*, 841 A.2d 1244, 2004 D.C. App. LEXIS 42 (2004).

Under the "public duty doctrine" a government and its agents owe no general duty to provide public services, such as police protection, to particular citizens as individuals. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

The public duty doctrine provides that absent some "special relationship" between the government and the individual, the District's duty is



to provide public services to the public at large. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, the general duty owed to the public may become a specific duty owed to an individual if the police and the individual are in a special relationship different from that existing between the police and citizens generally. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, a special duty or special relationship may be established by a statute that prescribes mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To show a direct or continuing contact between an injured person and a governmental agency or official, for purposes of establishing a special relationship within the meaning of the public duty doctrine, the contact must be a direct transaction with the party injured or an arms-length relationship in which the city's agent is dealing directly, in some form, with the person injured, and the government must engage in an affirmative undertaking of protection on which the victim justifiably relies. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To establish a special relationship within the meaning of the public duty doctrine, affirmative negligence is required, as opposed to inaction or futile action. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

Mother of murder victim failed to show that victim justifiably relied on police for protection in connection with his alleged role as informant, and thus, public duty doctrine precluded mother's recovery in wrongful death and survival action against District; affidavits submitted by mother and her other son revealed that neither was aware of victim's alleged role as informant, it was likely that they would have been told if police had promised to provide protection, neither mother's affidavit nor that of victim's friend mentioned any promise made by police to protect victim and his family, and record excerpts from detective's deposition did not mention any promise of protection. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, more than general reliance is needed to require the police to act on behalf of a particular individual; rather, the plaintiff must specifically act, or refrain from acting, in such a way as to exhibit particular reliance upon the actions of the police in providing personal protection. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

District of Columbia officials were immune, under public duty doctrine, from liability to estates of victims allegedly murdered by escapee from halfway house operated by District Government absent showing that District owed victims duty greater than, or different from, that which it owed to public at large. *Klahr v. District of Columbia*, 576 A.2d 718, 1990 D.C. App. LEXIS 142 (1990).

#### **Public services.**

Public ambulance service provided by District of Columbia was equivalent to police and fire protection provided by the District as exercise of police power to further general health and welfare, notwithstanding user fees charged for ambulance service, so special duty analysis applicable to tort liability for police or fire services applied to the ambulance service. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

To establish liability on part of District of Columbia for advice and service rendered by public ambulance service, special relationship with caller had to be shown to establish that District of Columbia owed special duty of care beyond general duty owed to public at large; absent special relationship, District could not be held liable. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

One-time call to 911 for help does not establish special relationship that will support imposing liability on public authority, even when shameful and inexcusable ineptitude by municipal agency in failing to respond adequately to call for help is alleged; to give rise to special relationship that will support imposition of liability, public authority's response to private party must in some demonstrable way exceed response generally made to other members of public. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

Even a series of contacts over period of time between public agency and injured or endangered person is not enough to establish special relationship that will support imposition of liability based on conduct of agency, absent some showing that agency assumed greater duty to the person than duty owed to public at large. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

Even if dispatcher who answered 911 call erred by suggesting to caller who complained of terrific headaches that caller try taking aspirin for headache, public authority could not be held liable for dispatcher's failure to send ambulance to assist caller in dealing with what turned out to be life-threatening illness; public authority owed caller no special duty greater than that owed to public at large. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

Protocols and procedures developed by fire department for emergency medical service would not be considered to impose special duty on District of Columbia with respect to provision of public ambulance service for benefit of protected class consisting of sick people, so as to support imposition of liability on District for service rendered in response to emergency call. *Wanzer v. District of Columbia*, 580 A.2d 127, 1990 D.C. App. LEXIS 239 (1990).

#### Questions of law or fact.

Automobile collisions at street intersections nearly always present questions of fact, and only in exceptional cases will questions of negligence, contributory negligence, and proximate cause pass from the realm of fact to one of law. *District of Columbia v. Carlson*, 793 A.2d 1285, 2002 D.C. App. LEXIS 66 (2002).

Whether officers negligently used excessive force in violation of police regulations when they shot epileptic was question for jury in action brought by epileptic's mother against officers and District of Columbia, arising from shooting death of epileptic. *District of Columbia v. Evans*, 644 A.2d 1008, 1994 D.C. App. LEXIS 108 (1994).

Whether officers were negligent in their overall handling of situation when they shot epileptic was question for jury in action brought by epileptic's mother against officers and District of Columbia, arising from shooting death of epileptic. *District of Columbia v. Evans*, 644 A.2d 1008, 1994 D.C. App. LEXIS 108 (1994).

In intersectional collisions, issue of negligence and proximate cause will almost always be questions of fact to be decided by jury; question becomes one of law, however, when evidence adduced at trial will not support rational finding of proximate cause. *Washington Metro. Area Transit Authority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

In wrongful death actions, amount of damages to be awarded must be based largely on good sense and sound judgment of jury and all facts and circumstances of the case. D.C. Code 1981, § 16-2701. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Evidence as to cause of death of man found at bottom of elevator shaft warranted submission to jury. *McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1983 D.C. App. LEXIS 558 (1983).

Whether decedent's death resulted from negligence by police detective in using excessive force under the circumstances was question for jury in suit brought by decedent's wife and two minor children against the District of Columbia under the Wrongful Death Act and survival statute. D.C. Code 1973, §§ 11-921, 12-101, 16-2701. *District of Columbia v. White*, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

#### Review.

District of Columbia's challenges to verdict that found police officers committed negligence

and §§ 1983 violation based on use of excessive force in action brought by representatives of deceased perpetrator's estate that claimed officers used excessive force in killing perpetrator after perpetrator held his mother hostage at knife-point, were rendered moot, where Court of Appeals found officers were liable for assault and battery sufficient to support the unitary award of compensatory damages, and Court of Appeals found award of punitive damages was subject to elimination. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

#### Statute of limitations.

Under District of Columbia law, as predicted by Court of Appeals, statute of limitations would have barred patient at time of his death from bringing negligence action against hospital and blood supplier concerning blood contaminated with Human Immunodeficiency Virus (HIV), and thus, patient's son had no wrongful death cause of action after father's death, regardless of whether son's claim was filed within one-year wrongful death limitations period from date of father's death. D.C. Code 1981, §§ 12-301(8), 16-2701, 16-2702. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Under District of Columbia law, if decedent would have had cause of action at time of his death, then survivor has one year from date of death in which to file wrongful death action, even though statute of limitations for underlying claim, and hence any survival action, may have run before one-year wrongful death limitations period expires. D.C. Code 1981, §§ 16-2701, 16-2702. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Manifestation of any asbestos-related disease does not trigger running of statute of limitations on all separate, distinct, and later-manifested diseases engendered by same asbestos exposure; time to commence litigation on separate and distinct disease does not begin to run until that disease becomes manifest. D.C. Code 1981, § 12-301(8). *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111, 1982 U.S. App. LEXIS 16975 (C.A.D.C. 1982).

Statute of limitations on filing wrongful death and survival action was tolled by unprivileged failure of physician and hospital to permit decedent's son to inspect decedent's medical records. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Fraudulent concealment of information moving party needs in order to determine whether there is a litigable dispute tolls the running of statute of limitations on death action. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703.



*Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Even under discovery rule, District of Columbia's three-year limitations period applicable to personal injury action of recipient of blood contaminated with human immunodeficiency virus (HIV) began to run no later than date on which recipient learned of contaminated blood and that he had tested HIV-positive. D.C. Code 1981, § 12-301(8). *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501, 1993 U.S. Dist. LEXIS 3145 (1993), affirmed in part and reversed in part by 26 F.3d 193, 307 U.S. App. D.C. 52, 1994 U.S. App. LEXIS 16163 (1994).

Wrongful death claim of personal representative of estate of recipient of blood contaminated with human immunodeficiency virus (HIV) was not barred by limitations under District of Columbia law where action was brought within one year of recipient's death, even though recipient himself was, at time of his death, barred by limitations from bringing suit; cause of action created by District of Columbia's Wrongful Death Act was not derivative but, rather, was new and independent cause of action. D.C. Code 1981, § 16-2702. *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501, 1993 U.S. Dist. LEXIS 3145 (1993), affirmed in part and reversed in part by 26 F.3d 193, 307 U.S. App. D.C. 52, 1994 U.S. App. LEXIS 16163 (1994).

Suit brought under Virginia wrongful death statute was not barred by one year limitation under District of Columbia wrongful death statute, since accident occurred in Virginia and District of Columbia statute was limited to case for which there was "an injury done or happening within limits of the District." Va. Code 1950, §§ 8.01-50, 8.01-244; D.C. Code §§ 16-2701, 16-2702. *Higgins v. Washington Metropolitan Area Transit Authority*, 507 F. Supp. 984, 1981 U.S. Dist. LEXIS 11943 (1981).

Pendency of personal injury action under Survival Act does not toll statute of limitations on a death claim. D.C. Code §§ 12-101, 12-301, 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. D.C. Code §§ 12-101, 12-301, 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

Where action for wrongful death of minor who fell into window well on church property while fleeing from alleged vicious dogs was brought against trustees of church within period of limitations and, after running of period of limitations, complaint was amended to substitute church corporation for the trustees, and where no service was made on the trustees within the period of limitations and there was no showing that, within such period, church and its trustees had knowledge of extent of

church's alleged involvement or that action had been instituted, statute of limitations had run as to church, notwithstanding rule as to relation back of amendments. U.S. Dist. Ct. Rules, Dist. of Col. rule 13; D.C. Code §§ 16-2701 et seq., 16-2702; Fed. Rules Civ. Proc. rule 15(c), 18 U.S.C. *Patterson v. White*, 51 F.R.D. 175, 1970 U.S. Dist. LEXIS 10405 (1970).

Where hospital was put on notice that it would have to defend a claim arising out of death of plaintiff's father by original complaint wherein deceased's son, individually and on behalf of deceased's estate, sought recovery under the Survival Act and the Wrongful Death Act, subsequent amendment wherein son brought suit in his capacity as administrator of estate would be allowed to relate back to time of filing of original complaint, and, thus, suit was not barred by statute of limitations. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Time limit for bringing a wrongful death action is a part of the right of action itself. D.C. Code §§ 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

The discovery rule exception does not apply to a wrongful death claim. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

Plaintiff is given the benefit of tolling the statute until the concealment ends unless exercising due diligence, through any means including an effort to obtain the undisclosed information that masks the claim, plaintiff knew or could have known of the possible claim. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

Plaintiff failed to exercise due diligence to obtain the information a hospital had withheld where the concealment could have been ended through the simple expedient of a second request. *Berg v. Footer*, 120 WLR 2253 (Super. Ct. 1992).

### Sudden emergency.

Sudden emergency doctrine did not apply to negligence action brought by parents of elevator rider who was allegedly contributorily negligent in falling down elevator shaft to her death when she attempted to get out of elevator that had stalled between floors; although rider may not have felt comfortable in the stalled elevator cab, rider was not reacting to an impending emergency and had ample reason to suppose that help was on the way. *Phillips v. Fujitec Am., Inc.*, 3 A.3d 324, 2010 D.C. App. LEXIS 506 (2010).

### Suicide.

Damages may be recovered for suicide of another if the allegedly negligent conduct of a third party so brings about the delirium or insanity of the suicide victim as to make the

third party liable for it if the delirium or insanity makes it impossible for the suicide victim to resist an impulse caused by his insanity which deprives him of his capacity to govern his conduct in accordance with reason. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

There could be no recovery from police officer for suicide of arrestee who was shot by the police officer and left paralyzed in the absence of any testimony that depression which the arrestee suffered thereafter led him to have an irresistible impulse to take his own life. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

One may generally not recover damages in negligence for the suicide of another as the act of suicide is considered to be a deliberate, intentional, and intervening act which precludes the finding that a given defendant is responsible for the decedent's death. *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

#### **Weight and sufficiency of evidence.**

District court's inference of "knowing assistance" on part of live-in companion of burglar who committed murder during course of attempted burglary was not clearly erroneous in light of live-in companion's own testimony concerning her service to enterprise as banker, bookkeeper, recordkeeper and secretary over a long period of time. *Halberstam v. Welch*, 705 F.2d 472, 1983 U.S. App. LEXIS 28914 (C.A.D.C. 1983).

Evidence was sufficient to support finding that police officers' action of shooting at perpetrator until he was dead exceeded the force reasonably necessary to prevent serious bodily harm to perpetrator's mother, who was held hostage by perpetrator, or officers to support award of compensatory damages for assault and battery to representatives of deceased perpetrator's estate in action brought by representatives for officers alleged use of excessive force in killing perpetrator after holding mother hostage at knifepoint; mother testified that pauses occurred between successive rounds of shots and that as shooting continued, she heard one officer say to the others, "why don't you stop shooting," and other testimony permitted an inference that an officer had moved mother well out of defendant's reach after first two shots had been fired. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Expert testimony is required to establish proximate cause in intersectional collision cases when such matter at issue is so distinctly related to some science, profession, business or occupation as to be beyond ken of average layman. *Washington Metro. Area Transit Au-*

*thority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

Bus company was not liable to passengers thrown from car following intersectional collision with bus absent expert or lay testimony supporting finding that, notwithstanding intervening cause of speed of car, it was excessive speed of bus which caused passengers to be thrown from car, which hit center of bus, spun and hit bus a second time which, in turn, propelled passengers from car. *Washington Metro. Area Transit Authority v. Davis*, 606 A.2d 165, 1992 D.C. App. LEXIS 94 (1992).

There was evidence from which jury could have found District of Columbia negligent in wrongful death suit arising out of death of jail detainee from bronchial spasm; guards did not intervene after observing him nude in a contorted position on floor of his cell, without changing position over several hours. *D.C. Code 1981, § 12-101 et seq. Finkelstein v. District of Columbia*, 593 A.2d 591, 1991 D.C. App. LEXIS 159 (1991).

Recovery for suicide does not require expert testimony drawing the ultimate conclusion for the jury that the suicide was caused by an irresistible impulse resulting from mental illness caused by the defendant's negligent act and the expert's testimony need not use any particular terminology such as "irresistible impulse." *District of Columbia v. Peters*, 527 A.2d 1269, 1987 D.C. App. LEXIS 374 (1987).

In action under wrongful death and survival statutes, seeking damages for death of truck driver in automobile collision, evidence that unknown owner of another truck left his vehicle standing in lane of traffic in middle of bridge without its lights on or its warning devices flashing during poor weather conditions at night was sufficient to support finding that unknown owner was negligent and that decedent did everything reasonably possible to avoid the accident and thus was not contributorily negligent. *D.C. Code 1981, §§ 12-101, 16-2701. Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Expert economic testimony in wrongful death case represents only guideline and may not be adopted at its face value as sole basis for determination of damages for death. *D.C. Code 1981, § 16-2701. Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

In action brought by administratrix of decedent's estate and by decedent's widow against decedent's employer under Wrongful Death Act and Survival Act, conclusory allegations and innuendo to effect that corporate officials of employer conspired in the killing of decedent by a fellow employee were insufficient to preclude summary judgment for employer under exclusive liability provision of the Longshoremen's and Harbor Workers' Compensation Act, absent any supporting depositions, affidavits or other



documents. D.C. Code 1981, §§ 12-101, 16-2701, 36-301 et seq.; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950. *Rustin v. District of Columbia*, 491 A.2d 496, 1985 D.C. App. LEXIS 352 (1985), writ of certiorari denied by 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290, 1985 U.S. LEXIS 4230, 54 U.S.L.W. 3309 (1985).

In order to defeat motion for summary judgment, plaintiffs in wrongful death action were not required to eliminate with complete certainty every other possible cause or inference of death but needed only to introduce evidence with sufficient probative force to support inference that decedent's accident was probably caused by defendants' want of due care. *McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1983 D.C. App. LEXIS 558 (1983).

Where there are no eyewitnesses to accident and cause thereof cannot be established by direct proof, then facts which can be established circumstantially may justify inference by jury that negligent conditions produced injury.

*McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1983 D.C. App. LEXIS 558 (1983).

Task of projecting person's lost earnings lends itself to clarification by expert testimony because it involves use of statistical techniques and requires broad knowledge of economics and, when properly utilized, such expert testimony can provide rational basis for jury's determination of individual's future earnings and can thus minimize risk of jury speculation present whenever future earnings must be predicted. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Jury's negative response to interrogatory in wrongful death action as to whether police officer who shot and mortally wounded plaintiff's decedent assaulted the decedent did not entitle officer and the District of Columbia to judgment in view of affirmative answer to interrogatory that officer acted negligently and that negligence was the cause of death. D.C. Code §§ 12-101, 16-2701. *District of Columbia v. Downs*, 357 A.2d 857, 1976 D.C. App. LEXIS 280 (1976).

## § 16-2702. Party plaintiff; statute of limitations.

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within one year after the death of the person injured.

(Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1.)

**Cross references.** — Death or injury caused by defective or unsafe improvements to real property, actions, see § 12-310

**Prior Codifications.** — 1981 Ed., § 16-2702.

1973 Ed., § 16-2702.

**Temporary Amendment of Section.** — Section 2 of D.C. Law 19-147 substituted "2 years" for "one year".

Section 4(b) of D.C. Law 19-147 provided that

the act shall expire after 225 days of its having taken effect.

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 2 of Wrongful Death Emergency Act of 2012 (D.C. Act 19-338, March 30, 2012, 59 DCR 2567).

For temporary (90 day) amendment of section, see § 2 of the Wrongful Death Congressional Review Emergency Act of 2012 (D.C. Act 19-390, July 9, 2012, 59 DCR 8499).

## CASE NOTES

### ANALYSIS

Accrual of claim.

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In general.

Personal representative.

Relation back.

Standing.

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### Accrual of claim.

Wrongful death claim brought under District of Columbia law by parent of deceased inmate

against correctional facility management company, stemming from inmate's death following incarceration, accrued upon actual date of inmate's death. *Smith v. Corr. Corp. of Am., Inc.*, 674 F.Supp.2d 201, 2009 U.S. Dist. LEXIS 117753 (2009).

### Damages.

Wrongful Death Act does not authorize compensation for grief caused surviving spouse and next of kin. D.C. Code §§ 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Under District of Columbia Wrongful Death Act, proper recovery is amount of financial loss

suffered by spouse and next of kin as result of decedent's death; there is no provision for recovery by decedent's survivors for mental suffering, grief, or anguish. D.C. Code 1981, § 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

#### **Discovery.**

Dismissal of mother's wrongful death and survivor's complaint as sanction for failure to respond to discovery requests for over 14 months exacted too severe cost on heirs and next of kin not responsible for mother's default and was inappropriate, where proceedings had been commenced to replace mother as personal representative of estate of deceased children and substitution could be expected to occur without substantially affecting scheduled trial date, which was still three months in future; risk that case would have to be severed from similar consolidated cases remained speculative and had not prejudiced defendant; inability to depose mother also was not ground for dismissal, since trial court had previously ordered exclusion of expert witnesses from mother's case as lesser sanction for discovery violations. Civil Rules 37(b), 41(b). *Peek v. District of Columbia*, 567 A.2d 50, 1989 D.C. App. LEXIS 279 (1989).

#### **Election of remedies.**

Where husband and father's death was result of defendants' negligence, recovery could be had under both the Survival Statute and the Wrongful Death Act; however, double recovery for the same elements of damage was to be avoided. D.C. Code §§ 12-101, 16-2701, 16-2702. *Group Health Asso. v. Gatlin*, 463 A.2d 700, 1983 D.C. App. LEXIS 423 (1983).

Negligent conduct resulting in death may generate simultaneously two independent bases for action, one under the Survival Act and the other under the Wrongful Death Act, upon each of which damages may be sought. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

#### **In general.**

If a tort causes death, two interests have been invaded: the first is the interest of the deceased in the security of his person and property and the personal representative of the deceased's estate may bring an action on behalf of the estate to recover for the invasion of that interest; the second is the impairment of the interests of the deceased's spouse and next of kin and they may recover pecuniary loss resulting from the death provided the personal representative of deceased's estate prevails in their behalf in the wrongful death action. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v.*

*District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Under District of Columbia choice of law rules, Maryland statute of limitations applied in wrongful death action brought against District of Columbia halfway house by personal representative of estate of Maryland resident murdered in Maryland by former inmate of halfway house; District of Columbia public policy was not clearly opposed to application of Maryland law, since application of District's wrongful death statute was limited to actions arising out of injury suffered within District. *Smith v. Hope Vill., Inc.*, 481 F.Supp.2d 172, 2007 U.S. Dist. LEXIS 26904 (2007).

The wrongful death statute, as a statutory creation not contemplated by the common law, must be read, if possible, without reference to other statutes. D.C. Code 1981, § 12-101 et seq. *Group Health Asso. v. Gatlin*, 463 A.2d 700, 1983 D.C. App. LEXIS 423 (1983).

#### **Personal representative.**

Under statute providing that no physician or surgeon shall be permitted without consent of patient or his legal representatives to disclose any confidential information acquired in attending patient professionally, the duly qualified personal representative, when there is one, is deceased patient's "legal representative" for purposes of gathering information with a view to prosecuting a wrongful death claim. D.C. Code §§ 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Decedent's son and only child had so vital an identification with any cause of action potentially arising upon his father's negligently caused demise as would enable him to waive the physician-patient privilege as to pertinent medical data where there was no personal representative to act in his behalf so that the assertion of the physician-patient privilege did not defeat son's right to inspect decedent's medical report or establish physician's and hospital's duty to preserve confidentiality of records against all save decedent's legal representative. D.C. Code §§ 12-101 to 12-104, 12-301(8), 14-307(a, b), 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Estate and survivor of Iraqi citizens could act as citizens' personal representatives under District of Columbia law in actions against government contractor which hired private-security corporation whose personnel allegedly shot and killed citizen in Iraq, provided that estate and survivor filed with District's Register of Wills the Iraqi legal documents appointing them as representatives. *Estate of Manook v. Research*



Triangle Inst., Int'l, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

Term "personal representative" as used in District of Columbia's Wrongful Death Act statute is limited to officially appointed executors and administrators. D.C. Code 1981, § 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

For insurance purposes, term "legal representative" is not synonymous with "personal representative," and it includes, at least, heirs at law. *Young v. Firemen's Ins. Co.*, 463 A.2d 675, 1983 D.C. App. LEXIS 414 (1983).

In absence of personal representative or other party claiming status of legal representative, insured's widow was his "legal representative" within meaning of policy insuring insured and his legal representatives against direct loss by fire. D.C. Code 1981, § 20-101(j). *Young v. Firemen's Ins. Co.*, 463 A.2d 675, 1983 D.C. App. LEXIS 414 (1983).

The phrase "personal representative" as used in the Wrongful Death Act refers only to an officially appointed administrator or executor. D.C. Code § 16-2702. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

#### Relation back.

Amendment relates back to date of initial complaint if amendment changes identity of a plaintiff or changes capacity in which a plaintiff is suing. Civil Rule 15(c). *International Tours & Travel, Inc. v. Khalil*, 491 A.2d 1149, 1985 D.C. App. LEXIS 385 (1985).

Trial court erred in denying corporation's motion to amend its complaint against former employee with relation back to time of original complaint even though original complaint was filed on behalf of corporation by its president who may have had no authority to file complaint where president was subsequently authorized by corporation to file complaint on its behalf and where defendants had notice of claims against them and of the party asserting claims and, therefore, suffered no cognizable prejudice. *International Tours & Travel, Inc. v. Khalil*, 491 A.2d 1149, 1985 D.C. App. LEXIS 385 (1985).

#### Standing.

Under District of Columbia law, plaintiff had standing to bring survival claims on behalf of estate and wrongful death claims on behalf of decedent's next of kin solely in her capacity as personal representative of estate of decedent, not individually, as mother of decedent, or as next friend of decedent's siblings. *Henson v. W.H.H. Trice & Co.*, 466 F.Supp.2d 187, 2006 U.S. Dist. LEXIS 91995 (2006).

Parents of decedent, who was killed when an airplane struck his automobile, could not maintain action against airline under District of

Columbia's Survival and Wrongful Death Act statutes, since neither parent qualified as decedent's personal representative and were not decedent's heirs under law of District of Columbia or California; furthermore, since parents' claimed only damages suffered by them rather than losses of decedent, they did not allege damages which were proper subject of survival action. D.C. Code 1981, §§ 12-101, 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

The wrongful death statute does not create a right of action in anyone but the personal representative; the right of action is controlled by the personal representative, and it is his fiduciary duty to observe the applicable limitations period. D.C. Code 1981, § 12-101 et seq. *Group Health Assn. v. Gatlin*, 463 A.2d 700, 1983 D.C. App. LEXIS 423 (1983).

Law partnership has no right of action for damages arising out of death of managing partner of law firm. D.C. Code 1981, § 16-2701 et seq. *Cole, Raywid & Braverman v. Quadrangle Development Corp.*, 444 A.2d 969, 1982 D.C. App. LEXIS 341 (1982).

Decedent's surviving spouse had standing to contest decedent's will in light of fact that surviving spouse would have statutory priority to serve as administratrix if decedent died intestate, as would be the case if proffered will was invalid. D.C. Code § 20-334. *In re Estate of Wilson*, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Decedent's heirs-at-law and next of kin were proper parties to contest decedent's will. *In re Estate of Wilson*, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

#### Statute of limitations.

Under District of Columbia law, as predicted by Court of Appeals, statute of limitations would have barred patient at time of his death from bringing negligence action against hospital and blood supplier concerning blood contaminated with Human Immunodeficiency Virus (HIV), and thus, patient's son had no wrongful death cause of action after father's death, regardless of whether son's claim was filed within one-year wrongful death limitations period from date of father's death. D.C. Code 1981, §§ 12-301(8), 16-2701, 16-2702. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Under District of Columbia law, if decedent would have had cause of action at time of his death, then survivor has one year from date of death in which to file wrongful death action, even though statute of limitations for underlying claim, and hence any survival action, may have run before one-year wrongful death limitations period expires. D.C. Code 1981, §§ 16-2701, 16-2702. *Nelson v. American Nat'l Red*

Cross, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Widow's claim for wrongful death damages based on strict liability and breach of warranty was not barred by District of Columbia statute of limitations where parties had entered into stipulation, by which pilot's widow's original action against manufacturers of plane and its engine seeking damages for pilot's death and alleging that defect in engine and aircraft had caused crash was dismissed, pledging that defendant would not invoke statute of limitations if plaintiff were to refile action after statutory time for filing expired, and new action was substantially the same as original action. *Leachman v. Beech Aircraft Corp.*, 694 F.2d 1301, 1982 U.S. App. LEXIS 23624 (C.A.D.C. 1982).

Manifestation of any asbestos-related disease does not trigger running of statute of limitations on all separate, distinct, and later-manifested diseases engendered by same asbestos exposure; time to commence litigation on separate and distinct disease does not begin to run until that disease becomes manifest. *D.C. Code 1981, § 12-301(8)*. *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111, 1982 U.S. App. LEXIS 16975 (C.A.D.C. 1982).

A fraudulent concealment tolls a statute of limitations only for so long as the concealment endures. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

One well-established defense to a claim of fraudulent concealment such as would toll running of a statute of limitations is that plaintiff knew, or by exercise of due diligence could have known, that he might have a cause of action. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Fraudulent concealment of existence of cause of action tolls the running of a conventional statute of limitations. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Fraudulent concealment of information moving party needs in order to determine whether there is a litigable dispute tolls the running of statute of limitations on death action. *D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703*. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Statute of limitations on filing wrongful death and survival action was tolled by unprivileged failure of physician and hospital to permit decedent's son to inspect decedent's medical records. *D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703*. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Personal representative of shooting victim was collaterally estopped, under District of Columbia law, from arguing that Chinese gun manufacturer was equitably estopped from asserting statute of limitations defense in wrongful death action and from challenging dismissal without prejudice of representative's prior claim; representative's argument, that his failure to effect service on manufacturer should have been excused as manufacturer's fault, was fully and fairly litigated in earlier action. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Personal representative of shooting victim was barred, under District of Columbia law, from asserting equitable tolling of one-year statute of limitations for his wrongful death claim and three-year statute of limitations for other torts in his capacity as personal representative, in action against gun manufacturer, where assertion of equitable tolling was based on allegedly timely filing of claims that were later dismissed without prejudice. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Cause of action for wrongful death accrued, and one-year limitations period under District of Columbia law began to run, on date worker was killed by steam and water burst at federal construction project site. *Hudert v. Alion Sci. & Tech. Corp.*, 526 F.Supp.2d 57, 2007 U.S. Dist. LEXIS 87946 (2007).

Wrongful death claim of personal representative of estate of recipient of blood contaminated with human immunodeficiency virus (HIV) was not barred by limitations under District of Columbia law where action was brought within one year of recipient's death, even though recipient himself was, at time of his death, barred by limitations from bringing suit; cause of action created by District of Columbia's Wrongful Death Act was not derivative but, rather, was new and independent cause of action. *D.C. Code 1981, § 16-2702*. *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501, 1993 U.S. Dist. LEXIS 3145 (1993), affirmed in part and reversed in part by 26 F.3d 193, 307 U.S. App. D.C. 52, 1994 U.S. App. LEXIS 16163 (1994).

Suit brought under Virginia wrongful death statute was not barred by one year limitation under District of Columbia wrongful death statute, since accident occurred in Virginia and District of Columbia statute was limited to case for which there was "an injury done or happening within limits of the District." *Va. Code 1950, §§ 8.01-50, 8.01-244*; *D.C. Code §§ 16-2701, 16-2702*. *Higgins v. Washington Metropolitan Area Transit Authority*, 507 F. Supp. 984, 1981 U.S. Dist. LEXIS 11943 (1981).

Where action for wrongful death of minor who fell into window well on church property while fleeing from alleged vicious dogs was



brought against trustees of church within period of limitations and, after running of period of limitations, complaint was amended to substitute church corporation for the trustees, and where no service was made on the trustees within the period of limitations and there was no showing that, within such period, church and its trustees had knowledge of extent of church's alleged involvement or that action had been instituted, statute of limitations had run as to church, notwithstanding rule as to relation back of amendments. U.S. Dist. Ct. Rules, Dist. of Col. rule 13; D.C. Code §§ 16-2701 et seq., 16-2702; Fed. Rules Civ. Proc. rule 15(c), 18 U.S.C. *Patterson v. White*, 51 F.R.D. 175, 1970 U.S. Dist. LEXIS 10405 (1970).

The statute of limitations for a wrongful death action may be tolled only on a showing of fraudulent concealment of the existence of a cause of action. D.C. Code 1981, § 16-2702. *Flemmings v. District of Columbia*, 719 A.2d 963, 1998 D.C. App. LEXIS 206 (1998).

District of Columbia statute of limitations was not subject to equitable tolling while negotiations led to joint waiver of arbitration under Maryland Health Care Malpractice Claims (HCMC) Act. D.C. Code 1981, §§ 12-301(8), 16-2702; Md. Code, Courts and Judicial Proceedings, § 3-2A-01 et seq. *Huang v. D'Albora*, 644 A.2d 1, 1994 D.C. App. LEXIS 98 (1994).

The one year statute of limitations contained in the wrongful death statute is not tolled by

surviving heir's minority. D.C. Code 1981, §§ 12-101 et seq., 12-302(a)(1). *Group Health Assn. v. Gatlin*, 463 A.2d 700, 1983 D.C. App. LEXIS 423 (1983).

Administratrix' wrongful death and survival actions were barred by statute of limitations where the claims on behalf of decedent's estate were not filed until over three years after date of automobile accident which resulted in decedent's death despite contention that defendants concealed their identities, and even though defendants failed to file an accident report in violation of statute, in that defendants' concealment of their identities did not toll running of the limitation periods, and in any event defendant knew identity of owner of the vehicle and thus could have filed a timely claim. D.C. Code 1973, §§ 12-101, 12-301(8), 16-2702, 40-426. *Estate of Chappelle v. Sanders*, 442 A.2d 157, 1982 D.C. App. LEXIS 298 (1982).

Fraudulent concealment is the only instance where an appellate court has ruled that the statute of limitations may be tolled in a wrongful death action. *Coleman v. Group Health Ass'n*, 118 WLR 2289 (Super. Ct. 1990).

The discovery rule will not toll the statute of limitations in a wrongful death action. *Coleman v. Group Health Ass'n*, 118 WLR 2289 (Super. Ct. 1990).

Statute of limitations begins to run when identity of tortfeasor is known. *Eldridge v. Burrows*, 112 WLR 605 (Super. Ct. 1984).

## § 16-2703. Distribution of damages.

The damages recovered in an action pursuant to this chapter, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, may not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of an allocation, according to the provisions of the statute of distribution in force in the District.

(Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1.)

**Cross references.** — Hospital lien for accident injury services, wrongful death damages, see § 40-201.

Intestate succession, descent and distribution, see § 19-301 et seq.

**Prior Codifications.** — 1981 Ed., § 16-2703.

1973 Ed., § 16-2703.

### CASE NOTES

#### In general.

Under District of Columbia Wrongful Death Act, widow of helicopter crash victim was not entitled to damages for loss of consortium removal of gender-specific language from statute did not expand cause of action to allow surviv-

ing spouse to recover damages which were not recoverable under earlier version of Act. D.C. Code 1981, §§ 12-101, 16-2701 to 16-2703. *Joy v. Bell Helicopter Textron*, 999 F.2d 549, 1993 U.S. App. LEXIS 19063 (C.A.D.C. 1993).

Proper recovery under the Wrongful Death

Act is principally the amount of financial loss to the surviving spouse and next of kin; such share is customarily determined by first ascertaining the annual share of each in the deceased's earnings multiplied by the appropriate period of years, i.e., if the respective life expectancy of the spouse and next of kin is less than the work life expectancy of deceased each is limited to recovery for the years of his or her life expectancy and if the life expectancy of the spouse or next of kin is greater than that of the deceased each is limited to recovery for the period of deceased's work life expectancy and any part of each share is to be discounted to present worth on showing that such part would have been utilized for investment purposes. D.C. Code §§ 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

While certain factors, e. g., projected future income of the decedent, may be relevant to damages under both the Survival Act and the Wrongful Death Act, double recovery for the same elements of damage are to be avoided. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Damages recovered for wrongful death are not "assets of decedent's estate" and, except for expenses of last illness and burial, may not be appropriate to payment of debts or liabilities of decedent; rather, any amount recovered inures to benefit of decedent's next of kin, and personal representative acts only as a trustee on behalf of the decedent's family. D.C. Code §§ 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).



# CHAPTER 28. MEDICAL MALPRACTICE.

## *Subchapter I. Generally*

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16-2803. Extension of statute of limitations.  
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## *Subchapter II. Mediation*

- 16-2821. Requirement for mediation.

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## *Subchapter III. Evidence*

- 16-2841. Inadmissibility of benevolent gestures.

## *Subchapter I. Generally.*

### § 16-2801. Definitions.

For the purposes of this chapter, the term:

- (1) "Court" means the Superior Court of the District of Columbia.
- (2) "Healthcare provider" means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long-term care facility, behavior health residential treatment facility, health clinic, birth center, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — Law 16-263, the "Medical Malpractice Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-619 and transmitted to both Houses of Congress for its review. D.C. Law 16-263 became effective on March 14, 2007.

### § 16-2802. Notice of intention to file suit.

(a) Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action. Notice may be given by service on an intended defendant at his or her last known address registered with the appropriate licensing authority. Upon a showing of a good faith effort to give the required notice, the court may excuse the failure to give notice within the time prescribed.

(b) The notice required in subsection (a) of this section shall include sufficient information to put the defendant on notice of the legal basis for the claim and the type and extent of the loss sustained, including information

regarding the injuries suffered. Nothing herein shall preclude the person giving notice from adding additional theories of liability based upon information obtained in court-conducted discovery or adding injuries or loss which become known at a later time.

(c) A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

## CASE NOTES

### ANALYSIS

Construction and application.  
Construction with federal law.  
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Waiver.

### Construction and application.

Patient, who lost use of his left eye following cataract surgery at Veteran's Administration (VA) hospital, failed to comply with mandatory notice requirement of District of Columbia Medical Malpractice Proceedings Act (MMPA) prior to bringing malpractice action against companies that allegedly compounded and distributed solution injected into the eye during surgery, thereby barring his suit. *Diffenderfer v. United States*, 656 F.Supp.2d 137, 2009 U.S. Dist. LEXIS 86663 (2009).

Pre-filing notice requirement of Medical Malpractice Amendment Act, requiring claimants to notify defendants of malpractice actions at least 90 days prior to filing, applied to patient's claim that was filed prior to effective date of Act; Act represented procedural, not substantive, change in law, and patient was afforded effective grace period, not only through legislative extension of period within which claimants could file suit by 90 days, but because Act went into effect more than 90 days before patient would otherwise have been required to file to avoid statute-of-limitations bar, although latter consideration required plaintiff to file suit exactly 90 days after giving notice. *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 2009 D.C. App. LEXIS 361 (2009).

### Construction with federal law.

Retired Major General satisfied the 90-day notice of claim requirement of the District of Columbia Medical Malpractice Proceedings Act (MMPA), as required to bring Federal Tort Claims Act (FTCA) claim of medical malpractice against the United States in the District of Columbia, by complying with FTCA exhaustion requirements and Army regulations governing tort claims; Major General had notified the

Army that he suffered from urinary incontinence and impotence allegedly as a result of negligent medical care provided by government health care providers at Army hospital and that he was seeking \$2,000,000 from the United States for his injuries, he also submitted expert report in addition to these allegations, and as a result the government anticipated that the claim could lead to an action under the FTCA in federal court. *Brashear v. United States*, 847 F.Supp.2d 41, 2012 U.S. Dist. LEXIS 31466 (2012).

Under Erie doctrine, District of Columbia statute, which required decedent's personal representative to provide notice to companies involved in operation of nursing home of intention to file medical malpractice claim, constituted state "substantive law" applicable to representative's diversity action alleging wrongful death resulting from fraudulent and negligent conduct by companies; statute could not be construed to allow representative to avoid its pre-litigation requirements under D.C. law merely by filing diversity action in federal court. *Davis v. Grant Park Nursing Home LP*, 639 F.Supp.2d 60, 2009 U.S. Dist. LEXIS 68302 (2009).

### Tolling.

Patient's allegations were insufficient to plead subject matter jurisdiction under District of Columbia law as required for his medical malpractice action against doctor and hospital, absent allegations that patient notified defendants of his action at least 90 days prior to its filing as required under District of Columbia law, and absent a showing of a good faith effort that would excuse the failure. *Coleman v. Wash. Hosp. Ctr. Corp.*, 734 F.Supp.2d 58, 2010 U.S. Dist. LEXIS 89429 (2010), appeal dismissed by 2011 U.S. App. LEXIS 5426 (D.C. Cir. Mar. 15, 2011).

Patient did not make a good faith effort to comply with 90-day pre-filing intent-to-sue notice requirement of Medical Malpractice Amendment Act and thus did not qualify for an



exception to Act's filing requirements, rendering her action subject to dismissal; patient cited concern as to limitations period, but the Act unambiguously tolled the limitations period upon service of the 90-day notice, and patient filed her complaint 12 days prior to expiration of limitations period, thus calling into doubt whether she was legitimately worried about whether the extension of the limitations period established by the Act applied to her. *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 2009 D.C. App. LEXIS 361 (2009).

toppel argument in challenging dismissal of her medical malpractice action for failure to comply with pre-filing notice requirement of Medical Malpractice Amendment Act, thus rendering the issue subject to plain error review on appeal, where patient raised issue for first time on appeal. *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 2009 D.C. App. LEXIS 361 (2009).

#### **Waiver.**

Patient waived for appellate review her es-

### **§ 16-2803. Extension of statute of limitations.**

If the notice required under § 16-2802 is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the date of the service of the notice.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

#### **CASE NOTES**

#### **Good faith effort.**

Patient did not make a good faith effort to comply with 90-day pre-filing intent-to-sue notice requirement of Medical Malpractice Amendment Act and thus did not qualify for an exception to Act's filing requirements, rendering her action subject to dismissal; patient cited concern as to limitations period, but the Act unambiguously tolled the limitations period

upon service of the 90-day notice, and patient filed her complaint 12 days prior to expiration of limitations period, thus calling into doubt whether she was legitimately worried about whether the extension of the limitations period established by the Act applied to her. *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 2009 D.C. App. LEXIS 361 (2009).

### **§ 16-2804. Unknown defendant or unlicensed defendant.**

(a) Section 16-2802 shall not apply to:

(1) Any intended defendant whose name is unknown or who was not licensed at the time of the alleged occurrence or is unlicensed at the time notice is given;

(2) Any claim that is unknown to the person at the time of filing his or her notice; or

(3) Any intended defendant who is identified in the notice by a misnomer.

(b) Nothing indicated herein shall prevent the court from waiving the requirements of § 16-2802 upon a showing of good faith effort to comply or if the interests of justice dictate.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

*Subchapter II. Mediation.*

**§ 16-2821. Requirement for mediation.**

After an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference (“ISSC”), prior to any further litigation in an effort to reach a settlement agreement. The mediation schedule shall be included in the scheduling conference order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

**§ 16-2822. Mediator costs.**

Unless otherwise agreed by the parties, the costs of mediation, if any, shall be equally shared by the parties.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807; Mar. 25, 2009, D.C. Law 17-353, §§ 158(b), 257, 56 DCR 1117.)

**Effect of amendments.** — D.C. Law 17-353 validated a previously made technical correction in the section designation.

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

**Legislative history of Law 17-353.** — For Law 17-353, see notes following § 16-571.01.

**§ 16-2823. Mediators.**

(a) The court shall assign the parties to court-provided mediation and provide a roster of medical malpractice mediators from which the parties may hire an eligible medical malpractice mediator. In the alternative, all parties can agree to hire another individual outside the roster. To be eligible for inclusion in the roster of medical malpractice mediators, an individual shall be a judge or lawyer with at least 10 years of significant experience in medical malpractice litigation.

(b) If the parties cannot agree on the selection of a mediator, the court shall appoint one.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

**§ 16-2824. Attendance at mediation session.**

(a) For the purposes of this section, the term “a representative with



settlement authority” means an individual with control of the financial settlement resources for the case and the authority to pledge those resources to settle the case on behalf of a party.

(b) All parties shall personally attend mediation sessions.

(c) If a party is not an individual, a representative with settlement authority for the party shall attend the mediation session.

(d) In cases involving an insurance company, a representative of the company with settlement authority shall attend the mediation session.

(e) Attorneys representing each party with primary responsibility for the case shall attend the mediation session.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

### § 16-2825. Mediation statements.

(a) Each party shall submit a confidential mediation statement to the mediator no later than 10 days prior to the initial mediation session. The parties shall not send copies of the mediation statement to the clerk, the assigned judge, or the other parties.

(b) Unless not already stated in the complaint and answer, the mediation statement shall:

(1) Include a brief summary of facts;

(2) Identify the issues of law and fact in dispute and summarize the party’s position on those issues;

(3) Discuss whether there are issues of law or fact the early resolution of which could facilitate early settlement or narrow the scope of the dispute;

(4) Identify the attorney who will represent the party at the mediation session and the person with settlement authority who will attend the mediation session;

(5) Include any documents or materials relevant to the case which may assist the mediator and advance the purposes of the mediation session; and

(6) Present any other matters that may assist the mediator and facilitate the mediation.

(c) Mediation statements are intended solely to facilitate the mediation and shall not be filed with the court.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

### § 16-2826. Mediator’s report.

A mediator’s report shall be filed with the court no later than 10 days after the mediation has terminated, informing the court regarding:

(1) Attendance;

(2) Whether a settlement was reached; or

(3) If a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

## § 16-2827. Confidentiality.

(a) The mediation session shall be confidential. All proceedings at the mediation, including any statement made by any party, attorney, or other participant, shall be privileged and shall not be construed as an admission against interest. Any statement at such proceedings shall not be used in court in connection with the case or any other litigation. A party shall not be bound by anything said or done at the mediation unless a settlement is reached.

(b) A mediator shall not be compelled to provide evidence of a mediation communication in any subsequent trial.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.

### *Subchapter III. Evidence.*

## § 16-2841. Inadmissibility of benevolent gestures.

For the purpose of any civil action or administrative proceeding alleging medical malpractice against a healthcare provider, an expression of sympathy or regret made in writing, orally, or by conduct made by or on behalf of the healthcare provider to a victim of the alleged medical malpractice, any member of the victim's family, or any individual who claims damages by or through that victim, is inadmissible as an admission of liability. Nothing herein shall preclude the court from permitting the introduction of an admission of liability into evidence.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

**Cross references.** — Distribution of undivided interests in any property of the estate, partition proceedings, see § 20-1105.

**Legislative history of Law 16-263.** — For Law 16-263, see notes following § 16-2801.



## CHAPTER 29. PARTITION.

*Subchapter I. Partition Generally*

Sec.

16-2901. Parties; accounting by tenant in common.

*Subchapter II. Assignment of Dower; Parties to Partition Proceeding; Sale of Property Discharged from Dower or Spouse's Intestate Share*

16-2921 to 16-2925. [Repealed].

*Subchapter I. Partition Generally.***§ 16-2901. Parties; accounting by tenant in common.**

(a) The Superior Court of the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b) This section applies to cases where:

- (1) all the parties are of full age;
- (2) all the parties are infants;
- (3) some of the parties are of full age and some are infants;
- (4) some or all of the parties are non compos mentis; and
- (5) all or any of the parties are non-residents — and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect sections 21-146 and 21-704 [repealed].

(Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(1), (2).)

**Cross references.** — Coparcenary estates, abolition, see § 42-517.

Dower rights, see § 19-102 et seq.

Service by publication, nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

**Prior Codifications.** — 1981 Ed., § 16-2901.

1973 Ed., § 16-2901.

**References in text.** — Section 21-704, referred to in subsection (d), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

## CASE NOTES

## ANALYSIS

In general.  
Jurisdiction.  
Notice.  
Presumptions.  
Review.  
Sale of property.  
Tenants by entireties.

**In general.**

Cotenant's unilateral right of partition is integral element of a tenancy in common. D.C. Code 1981, § 16-2901(a). *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Partition fosters principle of free alienability of property by making it impossible for any one cotenant to veto transfer of another cotenant's share, unencumbered by the cotenancy. D.C. Code 1981, § 16-2901(a). *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Cotenant's unilateral right of partition makes it possible for any dissatisfied cotenant to, in effect, withdraw from and dissolve quasi-partnership which cotenancy entails. D.C. Code 1981, § 16-2901(a). *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Trial court, in partition action involving former family home awarded to the parties as tenants in common by divorce decree which created uncertainty as to its intended impact on the parties' right of partition of the family home, had power to determine whether decree itself, taken as a whole and considered in context of divorce proceedings, imposed limitations or conditions on parties' cotenancy right of partition. D.C. Code 1981, §§ 16-910, 16-2901. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Trial court, in granting divorce, had power to make provision that 75%-25% division of parties' interest in family home was subject to certain limitations and conditions which might affect either party's right of partition. D.C. Code 1981, §§ 16-910, 16-2901. *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Partition of real property is a remedy which any tenant in common is entitled to seek as a matter of right. D.C. Code § 16-2901. *Hinton v. Hinton*, 395 A.2d 7, 1978 D.C. App. LEXIS 347 (1978).

**Jurisdiction.**

An action for partition of real estate is a proceeding which is quasi in rem, thus court sitting where realty is located has subject-matter jurisdiction with which to exercise its power to dispose of the property. D.C. Code § 16-2901. *Hinton v. Hinton*, 395 A.2d 7, 1978 D.C. App. LEXIS 347 (1978).

**Notice.**

Former husband did not receive adequate

notice that original order nisi for appointment of trustee for partition sale of former marital residence was to be issued ex parte where he did not receive notice until two days before the order was signed. D.C. Code 1981, § 16-2901; Civil Rule 308. *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Where ex-wife, who as owner of premises as tenant in common with her ex-husband, appeared at partition hearing to contest proper notice but did not appeal ruling that notice was proper, wife was bound by ruling as was judge, who properly denied her motion for a preliminary injunction and ordered vesting of title to the property in the purchaser at partition sale. D.C. Code § 16-2901. *Hinton v. Hinton*, 395 A.2d 7, 1978 D.C. App. LEXIS 347 (1978).

**Presumptions.**

Even if action were considered as one for partition of property of husband and wife, presumption of equal ownership would be rebuttable. D.C. Code § 16-2901. *Benvenuto v. Benvenuto*, 389 A.2d 795, 1978 D.C. App. LEXIS 475 (1978).

**Review.**

Award to divorced husband of all District of Columbia property which had been held by parties during coverture as tenants by the entirety and which had not been disposed of by Maryland divorce decree was compatible with disposition which could have been made in a suit for partition and, although not specifically asked for, such relief could have been granted in husband's action seeking to have title to such property placed in his name; thus, reviewing court was justified in treating appeal as one from a lower court decree partitioning real property and such treatment disposed of any jurisdictional question whether district court could have awarded any remedy other than partition. D.C. Code §§ 16-910, 16-2901. *Sebold v. Sebold*, 444 F.2d 864, 1971 U.S. App. LEXIS 11872 (C.A.D.C. 1971).

Reviewing court could not determine whether trial court properly exercised its discretion in rejecting offer for partition sale where judge did not inquire into the adequacy of the offer nor explain why the offer would disadvantage either party. D.C. Code 1981, § 16-2901; Civil Rule 308. *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

The proper procedure for challenging an order of partition is an appeal to the District of Columbia Court of Appeals, not the seeking of a temporary restraining order from one Superior Court judge barring effectuation of what had been ordered by another Superior Court judge.



D.C. Code § 16-2901. *Hinton v. Hinton*, 395 A.2d 7, 1978 D.C. App. LEXIS 347 (1978).

### **Sale of property.**

Evidence was sufficient for finding that joint tenant dragged his feet in selling real property in partition action; joint tenant made it difficult to show property by displaying stop-work order prominently in front of property and by being present during open houses, which supported inference that efforts to market property were half-hearted at best and lip service at worst, presented no affirmative evidence of any further marketing efforts, and listed house on Internet for \$3.99 million which was far above price at which it was listed by real estate agents and sale price. *Johnston v. Hundley*, 987 A.2d 1123, 2010 D.C. App. LEXIS 15 (2010), remanded by 18 A.3d 802, 2011 D.C. App. LEXIS 219 (D.C. 2011).

Assuming that court exceeded its authority under partition statute, in making assessment of damages to nonresident joint tenant who alleged that conduct of resident joint tenant caused lower sale proceeds than otherwise would have been realized through diligent sales effort, appellate court could conclude that resident joint tenant either invited error or waived authority argument; resident joint tenant was awarded sole possession of house and sole control over marketing, and his attorney argued only that court should hear expert testimony about fair market values and hold him accountable for failing to sell the property at greater profit only if his actions exhibited bad faith. *Johnston v. Hundley*, 987 A.2d 1123, 2010 D.C. App. LEXIS 15 (2010), remanded by 18 A.3d 802, 2011 D.C. App. LEXIS 219 (D.C. 2011).

Trial court in action for sale of real property in lieu of partition abused its discretion in rejecting bidder's higher offer without considering the imposition of conditions proposed by bidder to assure his completion of transaction and to protect lower bidder from damages in event high bidder failed to do so; high bidder offered to post bond or other security for his performance of contract, and court did not explore or consider such conditions; moreover, court also rejected high bidder's proffer of a prepurchase financial statement. D.C. Code 1981, § 16-2901; Civil Rule 308(c). *Lynn v. Lynn*, 617 A.2d 963, 1992 D.C. App. LEXIS 311 (1992).

Directing sale of realty for terms higher than cash offer is not in itself violation of partition statute or rule nor an abuse of discretion. D.C. Code 1981, § 16-2901; Civil Rule 308. *Farmer*

*v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Rule governing partition sales does not require that offer be in identical terms to the published private sale offer, only that it has to be bona fide according to the court's prescription. D.C. Code 1981, § 16-2901; Civil Rule 308. *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Potential offerors at partition sale are entitled to be informed of requirements for a counteroffer to the published offer. D.C. Code 1981, § 16-2901; Civil Rule 308. *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Court may not force one cotenant to sell his or her interest to the other cotenant; partitioning cotenant is entitled to competitive benefits of a public sale. D.C. Code 1981, § 16-2901(a). *Carter v. Carter*, 516 A.2d 917, 1986 D.C. App. LEXIS 468 (1986).

Nothing in statute authorized court in partition action to order sale of interest of one tenant in common to the other. D.C. Code 1981, § 16-2901. *Hairston v. Hairston*, 454 A.2d 1369, 1983 D.C. App. LEXIS 284 (1983).

### **Tenants by entireties.**

Where marriage relationship was dissolved at suit of wife by Florida court, full faith and credit being given Florida judgment, the estate of which husband and wife were seised as tenants by the entireties on date of that decree became a "tenancy in common," and hence complaint for seeking partition of the property would be treated as one between tenants in common. D.C. Code 1940, §§ 16-409, 16-1301. *Scholl v. Scholl*, 72 F.Supp. 823, 1947 U.S. Dist. LEXIS 2401 (D.D.C.1947).

Where title to property purchased by husband and wife was taken in their names as tenants by the entireties, and both parties obligated themselves for balance due on a first trust, as of date of divorce decree obtained by wife in Florida, the parties became "tenants in common" and were equally bound by terms of contract of purchase and equally liable on the trust, so that wife was entitled to one-half of net value of the estate as of date of divorce decree, less any monies that either had paid on the property for benefit of other since date of the last accounting. D.C. Code 1940, §§ 16-409, 16-1301. *Scholl v. Scholl*, 72 F.Supp. 823, 1947 U.S. Dist. LEXIS 2401 (D.D.C.1947).

Property owned by parties as tenants by entireties cannot be partitioned, or sold in lieu of being partitioned, at behest of one party over objection of other. *Robinson v. Evans*, 554 A.2d 332, 1989 D.C. App. LEXIS 26 (1989).

*Subchapter II. Assignment of Dower; Parties to Partition Proceeding; Sale of Property Discharged from Dower or Spouse's Intestate Share.*

**§ 16-2921. Appointment of commissioners; cases of partition. [Repealed].**

Repealed.

(Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(1); Mar. 24, 1998, D.C. Law 12-81, § 10(mm), 45 DCR 745; Apr. 27, 2001, D.C. Law 13-292, § 803(c)(3), 48 DCR 2087.)

**Prior Codifications.** — 1981 Ed., § 16-2921.

1973 Ed., § 16-2921.

**Legislative history of Law 13-292.** — For D.C. Law 13-292, see notes following § 16-912.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998", was introduced in Council and assigned Bill

No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**§ 16-2922. Widow or widower of tenant in common. [Repealed].**

Repealed.

(Dec. 23, 1963, 77 Stat. 597, Pub. L. 88-241, § 1; Apr. 27, 2001, D.C. Law 13-292, § 803(c)(3), 48 DCR 2087.)

**Prior Codifications.** — 1981 Ed., § 16-2922.

1973 Ed., § 16-2922.

**Legislative history of Law 13-292.** — For D.C. Law 13-292, see notes following § 16-912.

**§ 16-2923. Wife or husband as party to partition proceeding. [Repealed].**

Repealed.

(Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); Apr. 27, 2001, D.C. Law 13-292, § 803(c)(3), 48 DCR 2087.)

**Prior Codifications.** — 1981 Ed., § 16-2923.

1973 Ed., § 16-2923.

**Legislative history of Law 13-292.** — For D.C. Law 13-292, see notes following § 16-912.

**§ 16-2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds. [Repealed].**

Repealed.



(Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); Apr. 27, 2001, D.C. Law 13-292, § 803(c)(3), 48 DCR 2087.)

**Prior Codifications.** — 1981 Ed., § 16-2924.

1973 Ed., § 16-2924.

**Legislative history of Law 13-292.** — For D.C. Law 13-292, see notes following § 16-912.

## **§ 16-2925. Sale of indivisible property; discharge from dower or intestate share. [Repealed].**

Repealed.

(Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(k)(3); Apr. 27, 2001, D.C. Law 13-292, § 803(c)(3), 48 DCR 2087.)

**Prior Codifications.** — 1981 Ed., § 16-2925.

1973 Ed., § 16-2925.

**Legislative history of Law 13-292.** — For D.C. Law 13-292, see notes following § 16-912.

CHAPTER 31. PROBATE COURT PROCEEDINGS.

Sec.

16-3101. Definition.

16-3102. Settlement of accounts as prima facie evidence only.

16-3103. Summons; failure to appear or give evidence.

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16-3110. Order admitting will to probate as conclusive evidence.

16-3111. Arbitration; exceptions.

16-3112. Costs and execution.

§ 16-3101. Definition.

As used in this chapter, the term "Probate Court" means the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(1).)

**Prior Codifications.** — 1981 Ed., § 16-3101.

1973 Ed., § 16-3101.

§ 16-3102. Settlement of accounts as prima facie evidence only.

Except as provided by section 16-3111, in actions:

(1) for an accounting, by legatees or next to kin against personal representatives, or wards against their guardians; or

(2) to subject the real estate of decedents to the payment of their debts, by creditors against personal representatives, or against heirs or devisees — a prior settlement of accounts in the Probate Court is only prima facie evidence as to the correctness of the accounts.

(Dec. 23, 1963, 77 Stat. 598, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(a), 27 DCR 2900; Apr. 30, 1988, D.C. Law 7-104, § 4(t), 35 DCR 147.)

**Prior Codifications.** — 1981 Ed., § 16-3102.

1973 Ed., § 16-3102.

**Legislative history of Law 3-85.** — Law 3-85, the "enacted Titles Numbering and Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.



**§ 16-3103. Summons; failure to appear or give evidence.**

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper on the return of the "summoned", and failure of the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its contempt power, or it may have his estate, or a part thereof attached and sequestered as provided by section 16-3104.

(Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2).)

**Prior Codifications.** — 1981 Ed., § 16-3103. 1973 Ed., § 16-3103.

**§ 16-3104. Sequestration where person fails to appear.**

(a) If two summonses issued to a person by the Probate Court are regularly returned non est by the United States marshal and it is necessary to proceed further to compel the person's attendance, the court may order and issue an attachment against his real and personal property. On return of the attachment, to which a schedule of the attached property, if any, shall be annexed, the court, by order, or commission under seal, may authorize a person or persons to take into his or their care and custody the property returned in the schedule, or a part thereof, and receive the profits thereof, to be accounted for, until the person summoned appears and obeys the order of the court, or until further order. If the marshal or other officer does not deliver the property accordingly, he is liable to be proceeded against as provided by this subsection.

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) When the purpose for which property sequestered under this section is answered, the court shall direct that the estate or property, and the profits, after making the deductions authorized by subsection (b) of this section, be restored to the person from whom the care and custody of the property were taken. When the person is dead, the court shall order the property to be delivered to his heirs, devisees or legal representatives, as soon as the purpose of the sequestration is answered, or immediately, on application, and on satisfying the court of the person's right, if the purpose, after the death of the original person, can not be answered.

(Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(3).)

**§ 16-3105** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Prior Codifications.** — 1981 Ed., § 16-3104. 1973 Ed., § 16-3104.

**§ 16-3105. Plenary proceeding; refusal to answer as required.**

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmation. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its contempt power, or it may have his property attached and sequestered as provided by section 16-3104.

(Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2).)

**Prior Codifications.** — 1981 Ed., § 16-3105. 1973 Ed., § 16-3105.

**CASE NOTES**

**Orders.**

Order in ongoing probate case determining that petitioner was daughter of intestate decedent was final, appealable order, even though

administration of decedent's estate continued. D.C. Code 1981, § 11-721(a)(1). *Murphy v. McCloud*, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

**§ 16-3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs.**

In a plenary proceeding provided for by section 16-3105, the Probate Court shall give judgment, or decree upon the bill an answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its contempt power, or by attachment and sequestration of the property as provided by section 16-3104.

(Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(l)(2); Mar. 24, 1998, D.C. Law 12-81, § 10(nn), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-3106. 1973 Ed., § 16-3106.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**CASE NOTES**

**Disclosure.**

Neither administratrix of estate of deceased artist, who was also the artist's widow who

claimed title to paintings by survivorship and had excluded them from estate accounting, nor attorney for administratrix and for widow in



her individual capacity had an obligation to advise deceased's father during settlement negotiations of the amounts obtained from sale of individual paintings or of any authoritative valuation of paintings prior to the \$50,000

settlement of father's claim against widow, and such failure to disclose did not constitute ground for setting aside settlement. *Bernstein v. Brenner*, 320 F. Supp. 1080, 1970 U.S. Dist. LEXIS 9191 (1970).

## § 16-3107. Enforcement of judgments, orders and decrees; application of property sequestrated.

The Probate Court may enforce its judgments, orders, decrees, and decisions in the manner provided by sections 16-3103 and 16-3104. When a judgment, order, decree, or decision is for the payment of money, the court may apply the property sequestrated to the purpose for which the judgment, order, decree, or decision is given.

(Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3107. 1973 Ed., § 16-3107.

### CASE NOTES

#### **Jurisdiction.**

District court sitting in probate had no jurisdiction to decide question of whether title to race horses had resided in deceased husband or widow and, therefore, earlier proceedings in district court were not res judicata and did not bar widow's subsequent action against administratrix of husband's estate to establish a resulting trust in respect of a sum of money which allegedly had come to estate by reason of fact that husband had been straw owner of the race horses which in fact belonged to the widow. *Anderson v. Pinkett*, 439 F.2d 619, 1971 U.S. App. LEXIS 12303 (C.A.D.C. 1971).

There is no restriction upon district court, sitting in probate, which limits its power to adjudicate right to possession of personalty. D.C. Code §§ 11-522, 16-3107, 18-132, 21-1504; Fed. Rules Civ. Proc. rules 1, 81, 18 U.S.C. Price v. Williams, 393 F.2d 348, 1968 U.S. App. LEXIS 8568 (C.A.D.C. 1968).

Probate Division of Superior Court has subject matter jurisdiction over estate of any decedent who was domiciled in District of Columbia at time of death. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

## § 16-3108. Ordering investment of funds; revocation of letters for noncompliance.

The Probate Court may order a personal representative, special administrator, or guardian, whom it has appointed, to bring into court or invest in securities, to be approved by the court, any funds received by the personal representative, special administrator, or guardian. If the party does not, within a reasonable time, to be fixed by the court, comply with the order, the court may revoke his letters.

(Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(b), 27 DCR 2900.)

**Prior Codifications.** — 1981 Ed., § 16-3108. 1973 Ed., § 16-3108.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-3102.

### § 16-3109. Compelling performance of duties by personal representatives, special administrators, etc.; revocation of letters.

The Probate Court may order a personal representative, special administrator, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of an inventory or account or the fulfillment of a duty in the court, to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act. On his appearance, the court may make such order as is just. On his failure to appear, after having been duly summoned, the court may revoke his power to act and make such further order and other appointment as justice requires. If the summons to appear is returned by the marshal "not to be found," an alias summons shall be mailed to the last-known post-office address of the fiduciary or served upon his attorney of record, if he is within the jurisdiction of the court. On the failure of the fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice requires.

(Dec. 23, 1963, 77 Stat. 600, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(b), 27 DCR 2900.)

**Prior Codifications.** — 1981 Ed., § 16-3109.  
1973 Ed., § 16-3109.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-3102.

### § 16-3110. Order admitting will to probate as conclusive evidence.

With respect to the trial of issues in the Probate Court, including the taking and use of testimony of non-resident witnesses, the Federal Rules of Civil Procedure, unless otherwise provided by law, are applicable thereto. A final order or decree admitting a will to probate, unless and until it is reversed, is conclusive evidence of the validity of the will in a collateral proceeding in which the will is brought into question, and a transcript of the record of the will, and of the decree admitting it to probate, is sufficient proof thereof.

(Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(c), 27 DCR 2900.)

**Prior Codifications.** — 1981 Ed., § 16-3110.  
1973 Ed., § 16-3111.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-3102.

### § 16-3111. Arbitration; exceptions.

The Probate Court may, with the consent in writing of both parties, arbitrate between a complainant and a personal representative, or between a personal representative and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of the arbitrator, and the court may confirm or



overrule the award. The award when confirmed is conclusive between the parties.

(Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(c), (d), 27 DCR 2900.)

**Prior Codifications.** — 1981 Ed., § 16-3111.  
1973 Ed., § 16-3112.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-3102.

## § 16-3112. Costs and execution.

The Probate Court may render judgment for costs against the unsuccessful party in any proceeding conducted in the court, and issue execution thereof.

(Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; Sept. 6, 1980, D.C. Law 3-85, § 5(c), 27 DCR 2900.)

**Cross references.** — Fees and costs in civil proceedings, see § 15-701 et seq.

**Prior Codifications.** — 1981 Ed., § 16-3112.

1973 Ed., § 16-3113.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-3102.

CHAPTER 33. QUIETING TITLE OBTAINED BY ADVERSE POSSESSION.

Sec.

16-3301. Complaint; allegations; parties; service; decree.

§ 16-3301. Complaint; allegations; parties; service; decree.

(a) When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the Superior Court of the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b) In an action pursuant to this section, if process is returned not to be found, notice by publication may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is unknown whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13-341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims.

(Dec. 23, 1963, 77 Stat. 601, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 561, Pub. L. 91-358, title I, § 145(m); Mar. 24, 1998, D.C. Law 12-81, § 10(oo), 45 DCR 745.)

**Cross references.** — Defense of adverse possession, see § 16-1113.

Limitation of actions, see § 12-301.

Service by publication, nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Superior court jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-3301.

1973 Ed., § 16-3301.

**Legislative history of Law 12-81.** — Law

12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.



## CASE NOTES

## ANALYSIS

Adversity.  
Boundaries.  
Burden of proof.  
Easements.

**Adversity.**

Wife, four children, and grandchild of man who died intestate, who filed civil action to quiet title, based on claim of adverse possession, to a townhouse decedent owned at time of his death, alleging that they held title to the property as deceased's heirs, although deceased remained owner of record, made no showing of adversity, and hence no valid claim of adverse possession, where there was nothing in the record to suggest that anyone other than the six plaintiffs had any interest whatsoever in the property, and thus, trial court properly concluded that no relief could be granted under Code § 16-3301, governing adverse possession. D.C. Code 1981, § 16-3301. *In re Tyree*, 493 A.2d 314, 1985 D.C. App. LEXIS 393 (1985).

The element of adverse user in the context of a prescriptive easement may be established by evidence that the claimant's use was under a claim of right or may be presumed from proof of a prima facie case of open and continuous use for the appropriate statutory period in the absence of contrary evidence. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

Evidence of an open, notorious and exclusive user by plaintiffs for statutory period of 15 years was sufficient to raise a presumption that user was adverse, but since defendants never objected to such user and, instead, engaged in friendly conversation and, further, affirmatively facilitated plaintiffs' passage, presumption of adverse user was rebutted, thus precluding plaintiffs from obtaining a prescriptive right-of-way across northern portion of defendant's property for purpose of placing garbage for weekly collection in a public alley and gaining access to and from a nearby street. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

**Boundaries.**

Discrepancy in relevant plat of survey would be adjusted to conform with judgment by confession entered in quieting title action. D.C. Code § 16-3301. *Sullivan v. Malarkey*, 392 A.2d 1057, 1978 D.C. App. LEXIS 331 (1978).

**Burden of proof.**

A claimant asserting a prescriptive easement by an open, notorious and exclusive user for

statutory 15-year period has burden of establishing such user by a preponderance of the evidence. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

**Easements.**

Effective user to establish a prescriptive easement must be open, notorious, exclusive, continuous, and adverse for a statutory period of 15 years. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

A user is adverse for purposes of creating a prescriptive easement if not accompanied by any recognition, in express terms or by implication, of a right in landowner to stop such use now or at some time in future. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

Period of adverse use of property with respect to establishment of prescriptive easement is not prevented from running against landlords while they are not in actual possession of their property, as the landlord may bring an action to remedy an injury to his reversion of the interest in the property which a potentially prescriptive use causes, and is therefore not "disabled" from protecting his property during that period. *Aleotti v. Whitaker Bros. Business Machines, Inc.*, 427 A.2d 919, 1981 D.C. App. LEXIS 226 (1981).

Even if there was a rule to the effect that the period with respect to establishment of prescriptive easement does not run against a landlord while not in actual possession of property, such rule would not apply when landlord was in possession at the time the adverse use was initiated; therefore, fact that property owner's predecessor in title was in actual possession of the property at the time adverse use began prevented application of such rule to exclude subsequent period in which the property was leased from inclusion within the requisite period to establish prescriptive easement in adjoining property owners. *Aleotti v. Whitaker Bros. Business Machines, Inc.*, 427 A.2d 919, 1981 D.C. App. LEXIS 226 (1981).

Determination of adversity, with respect to adverse use of property giving rise to a prescriptive easement, focuses essentially on factual manifestations of claimed ownership; adversity need not be asserted by an oral claim of right, but is established by circumstances which reflect a claim of right to a reasonably attentive owner. *Aleotti v. Whitaker Bros. Business Machines, Inc.*, 427 A.2d 919, 1981 D.C. App. LEXIS 226 (1981).

CHAPTER 35. QUO WARRANTO.

*Subchapter I. Actions Against Officers of the United States*

Sec.

16-3501. Persons against whom issued; civil action.

16-3502. Parties who may institute; ex rel. proceedings.

16-3503. Refusal of Attorney General or United States attorney to act; procedure.

*Subchapter II. Actions Against Officers or Corporations of the District of Columbia*

16-3521. Persons against whom issued; civil action.

16-3522. Parties who may institute; ex rel. proceedings.

Sec.

16-3523. Refusal of United States attorney or Corporation Counsel to act; procedures.

*Subchapter III. Procedures and Judgments*

16-3541. Allegations in petition of relator claiming office.

16-3542. Notice to defendant.

16-3543. Proceedings on default.

16-3544. Pleading; jury trial.

16-3545. Verdict and judgment.

16-3546. Usurping corporate franchise; judgment.

16-3547. Proceedings against corporate directors and trustees; judgment and order; enforcement.

16-3548. Recovery of damages from usurper; limitation.

*Subchapter I. Actions Against Officers of the United States.*

§ 16-3501. Persons against whom issued; civil action.

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action.

(Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3501.

1973 Ed., § 16-3501.

CASE NOTES

**Standing.**

Only Attorney General of the United States or United States Attorney General for the District of Columbia have standing to bring quo

warranto action challenging public official's right to hold office. *Taitz v. Obama*, 707 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 38343 (2010).

§ 16-3502. Parties who may institute; ex rel. proceedings.

The Attorney General of the United States or the United States attorney may institute a proceeding pursuant to this subchapter on his own motion or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by



him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant.

(Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n).)<sup>4</sup>

**Prior Codifications.** — 1981 Ed., § 16-3502. 1973 Ed., § 16-3502.

### CASE NOTES

**Standing.**

Only Attorney General of the United States or United States Attorney General for the District of Columbia have standing to bring quo

warranto action challenging public official's right to hold office. *Taitz v. Obama*, 707 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 38343 (2010).

## § 16-3503. Refusal of Attorney General or United States attorney to act; procedure.

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person on his compliance with the condition prescribed by section 16-3502 as to security for costs.

(Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n).)

**Cross references.** — Superior Court of the District of Columbia, jurisdiction, see § 11-921. 1973 Ed., § 16-3503.

**Prior Codifications.** — 1981 Ed., § 16-3503.

### *Subchapter II. Actions Against Officers or Corporations of the District of Columbia.*

## § 16-3521. Persons against whom issued; civil action.

A quo warranto may be issued from the Superior Court of the District of Columbia in the name of the District of Columbia against —

(1) a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the District of Columbia, a public office of the District of Columbia, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District of Columbia without being duly authorized, or exercise within the District of Columbia corporate rights, privileges, or franchises not granted them by law in force in the District of Columbia.

The proceedings shall be deemed a civil action.

(July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n).)

**Cross references.** — Superior court jurisdiction, see § 11-921. 1973 Ed., § 16-3521.

**Prior Codifications.** — 1981 Ed., § 16-3521.

**§ 16-3522. Parties who may institute; ex rel. proceedings.**

The United States attorney or the Corporation Counsel may institute a proceeding pursuant to this subchapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant.

(July 29, 1970, 84 Stat. 562, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3522. 1973 Ed., § 16-3522.

**§ 16-3523. Refusal of United States attorney or Corporation Counsel to act; procedures.**

If the United States attorney or Corporation Counsel refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the District of Columbia, on the relation of the interested person, on his compliance with the conditions prescribed by section 16-3522 as to security for costs.

(July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3523. 1973 Ed., § 16-3523.

*Subchapter III. Procedures and Judgments.*

**§ 16-3541. Allegations in petition of relator claiming office.**

When a quo warranto proceeding is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office.

(Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)



**Prior Codifications.** — 1981 Ed., § 16-3541. 1973 Ed., § 16-3541.

## § 16-3542. Notice to defendant.

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant cannot be found in the District of Columbia, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served.

(Dec. 23, 1963, 77 Stat. 602, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3542. 1973 Ed., § 16-3542.

## § 16-3543. Proceedings on default.

If the defendant does not appear as required by a writ of quo warranto, after being served, the court may proceed to hear proof in support of the writ and render judgment accordingly.

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3543. 1973 Ed., § 16-3543.

## § 16-3544. Pleading; jury trial.

In a quo warranto proceeding, the defendant may demur, plead specially, or plead “not guilty” as the general issue, and the United States or the District of Columbia, as the case may be, may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court.

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3544. 1973 Ed., § 16-3544.

## § 16-3545. Verdict and judgment.

Where a defendant in a quo warranto proceeding is found by the jury to have usurped, intruded into, or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs.

**§ 16-3546** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3545. 1973 Ed., § 16-3545.

**§ 16-3546. Usurping corporate franchise; judgment.**

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of.

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 563, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3546. 1973 Ed., § 16-3546.

**§ 16-3547. Proceedings against corporate directors and trustees; judgment and order; enforcement.**

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment.

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3547. 1973 Ed., § 16-3547.

**§ 16-3548. Recovery of damages from usurper; limitation.**

At any time within a year from a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled.

(Dec. 23, 1963, 77 Stat. 603, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(n).)

**Prior Codifications.** — 1981 Ed., § 16-3548. 1973 Ed., § 16-3548.



## CHAPTER 37. REPLEVIN.

Sec.

- 16-3701. Demand prior to action; costs.
- 16-3702. Form of complaint.
- 16-3703. Affidavit; contents.
- 16-3704. Undertaking to abide judgment of the court.
- 16-3705. Failure of officer to obtain possession; procedure.
- 16-3706. Publication against defendant.
- 16-3707. Default.
- 16-3708. Motion for return of property; procedure; objection to sufficiency of security.

Sec.

- 16-3709. Notice to officer of intention to move for return; duty of officer; time of motion.
- 16-3710. Determination and measure of plaintiff's damages.
- 16-3711. Judgment for defendant and determination of damages.
- 16-3712. Verdict where goods are eloigned.
- 16-3713. Judgment where goods are eloigned.
- 16-3731 to 16-3740. [Repealed].

### § 16-3701. Demand prior to action; costs.

In an action of replevin brought to recover personal property to which the plaintiff is entitled, that is alleged to have been wrongfully taken by or to be in the possession of and wrongfully detained by the defendant, it is not necessary to demand possession of the property before bringing the action; but the costs of the action may be awarded as the court orders.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

**Cross references.** — Attachment of property in replevin action, see § 16-517.  
Superior court jurisdiction, see § 11-921.

**Prior Codifications.** — 1981 Ed., § 16-3701.  
1973 Ed., § 16-3701.

### CASE NOTES

#### ANALYSIS

Abandonment.  
In general.  
Personal property.

#### Abandonment.

Under District of Columbia law, manufacturer of prosthetic hip components, whose sales representative had been given defective hip piece from patient's surgeon after he removed it from her body, was not liable to patient for replevin, since patient had abandoned the appliance; patient understood that manufacturer had taken possession of the component but she never voiced objections, asked for return of the property, or sought assurance of property's safekeeping over a four year period. *Hunt v. DePuy Orthopaedics, Inc.*, 729 F.Supp.2d 231, 2010 U.S. Dist. LEXIS 78536 (2010).

#### In general.

Creditor did not lose right to self-help repossession of automobile under retail installment contract by filing replevin action against debtor. D.C. Code 1981, §§ 16-3701, 16-3713. *Headspeth v. Mercedes-Benz Credit Corp.*, 709 A.2d 717, 1998 D.C. App. LEXIS 59 (1998), writ

of certiorari denied by 525 U.S. 1024, 119 S. Ct. 556, 142 L. Ed. 2d 463, 1998 U.S. LEXIS 7704, 67 U.S.L.W. 3362 (1998).

Personal representative of deceased sister's estate, who twice wrote police department property clerk, followed by letter from her attorney, asserting her right to guns seized by police from her deceased sister's apartment, was entitled to hearing before property clerk regarding continued retention of guns notwithstanding fact that letters did not specifically request hearing. U.S.C. Const.Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1981, §§ 4-157, 16-3701, 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

Availability of various legal actions by claimant to seized property, through which personal representative of deceased sister's estate could have contested retention of alleged firearms found by police in sister's apartment, did not eliminate government's obligation to inform personal representative that property clerk intended, for specific reason, to retain property taken unless she invoked certain procedures to recover it. D.C. Code 1981, §§ 4-157, 16-3701, 22-3214 to 22-3217. *Ford v. Turner*, 531 A.2d 233, 1987 D.C. App. LEXIS 405 (1987).

## § 16-3702 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Even if Supreme Court decision holding that certain replevin statutes violate due process were applicable to replevin statute involved in instant case, decision should have prospective effect only since rights have vested and actions have been taken between time of judgment in instant case and date of Supreme Court decision. D.C. Code § 16-3701 et seq. *Roebuck v. Walker--Thomas Furniture Co.*, 310 A.2d 845, 1973 D.C. App. LEXIS 373 (1973).

### **Personal property.**

Frequent flyer miles obtained by participant in airline's frequent flyer program did not amount to "personal property" under District of Columbia's replevin statute. *Ficken v. AMR Corp.*, 578 F.Supp.2d 134, 2008 U.S. Dist. LEXIS 75434 (2008).

## § 16-3702. Form of complaint.

A complaint in replevin shall be in the following or equivalent form:

"The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) the plaintiff's goods and chattels, to wit: (describe them) of the value of \_\_\_\_\_ dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are elojined, that he may have judgment of their value and all mesne profits and damages, which he estimates at \_\_\_\_\_ dollars, besides costs."

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3702. 1973 Ed., § 16-3702.

## § 16-3703. Affidavit; contents.

At the time of filing a complaint in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating that —

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the complaint;

(2) the defendant has seized and detained or detains the chattels; and

(3) the chattels were not subject to the seizure or detention and were not taken upon a writ of replevin between the parties.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3703. 1973 Ed., § 16-3703.

### CASE NOTES

#### **In general.**

Secured lender who failed to file affidavit or verified complaint as of time of application for hearing was not entitled to hearing on issuance

of writ of replevin. D.C. Code 1981, § 16-3703; Civil Rule 64-II(b, g). *Council v. Hogan*, 566 A.2d 1070, 1989 D.C. App. LEXIS 277 (1989).

## § 16-3704. Undertaking to abide judgment of the court.

At the time of filing a complaint in replevin, the plaintiff shall enter into an



undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

**Cross references.** — Bonds and undertakings, see § 28-2501 et seq. 1973 Ed., § 16-3704.

**Prior Codifications.** — 1981 Ed., § 16-3704.

## CASE NOTES

### **In general.**

Trial court could not waive requirement of bond in connection with issuance of writ of

replevin. D.C. Code 1981, § 16-3704. Council v. Hogan, 566 A.2d 1070, 1989 D.C. App. LEXIS 277 (1989).

## **§ 16-3705. Failure of officer to obtain possession; procedure.**

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for detention, or he may renew the writ in order to obtain possession of the goods and chattels themselves.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88-241, § 1.)

**Cross references.** — Attachment of property in replevin action, see § 16-517. 1973 Ed., § 16-3705.

**Prior Codifications.** — 1981 Ed., § 16-3705.

## **§ 16-3706. Publication against defendant.**

When the officer's return of a writ of replevin is that he has taken possession of the goods and chattels sued for, but indicates that personal service on the defendant could not be made, the court, subject to the provisions of section 13-340 as to mailing notice, may order that the defendant appear to the action by a fixed day. The plaintiff shall cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance.

(Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3706. 1973 Ed., § 16-3706.

**§ 16-3707. Default.**

If, after notice as provided by section 16-3706, the defendant fails to appear, the court may proceed as in case of default after personal service.

(Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3707. 1973 Ed., § 16-3707.

**§ 16-3708. Motion for return of property; procedure; objection to sufficiency of security.**

(a) On the taking possession of the goods and chattels by the marshal by virtue of a writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession. Thereupon, the court may inquire into the circumstances and manner of the defendant's obtaining possession of the property, and, if it seems just, may order the property to be returned to the possession of the defendant, to abide the final judgment in the action. The court may require the defendant to enter into an undertaking with surety or sureties, similar to that required of the plaintiff upon the commencement of the action. In such case, the court shall render judgment against the surety or sureties, as well as against the defendant.

(b) When it appears that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return of the property to the possession of the defendant. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking of the plaintiff, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken.

(Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3708. 1973 Ed., § 16-3708.

**§ 16-3709. Notice to officer of intention to move for return; duty of officer; time of motion.**

If the defendant in an action of replevin notifies the officer taking possession of the property, in writing, of his intention to make either of the motions specified by section 16-3708, the officer shall retain possession of the property until the motion is disposed of, if the motion is filed and notice given, as provided by section 16-3708, to the plaintiff or his attorney, within two days thereafter.

(Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)



**Prior Codifications.** — 1981 Ed., § 16-3709. 1973 Ed., § 16-3709.

## § 16-3710. Determination and measure of plaintiff's damages.

Whether, in an action of replevin, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service or publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where jury trial had been waived or there is no issue of fact, and the damages shall be the full value of the goods, if eloiigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and the judgment shall be rendered for the plaintiff accordingly.

(Dec. 23, 1963, 77 Stat. 605, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3710. 1973 Ed., § 16-3710.

### CASE NOTES

#### **In general.**

Prevailing litigant is ordinarily not entitled to collect reasonable attorney fees from loser, but exceptions are occasionally allowed, as when party brings or maintains unfounded suit or withholds action to which opposing party is entitled in bad faith, vexatiously, wantonly, or for oppressive reasons. Bay Gen. Indus. v. Johnson, 418 A.2d 1050, 1980 D.C. App. LEXIS 349 (1980).

In breach of contract cases, intent to defraud or other circumstances of extreme aggravation may support punitive damages award; proof of

fraud or malice need not be by direct evidence but may appear from all facts and circumstances of the case. Bay Gen. Indus. v. Johnson, 418 A.2d 1050, 1980 D.C. App. LEXIS 349 (1980).

In tort actions, punitive or exemplary damages must be founded on defendant's outrageous conduct, such as maliciousness, wantonness, gross fraud, recklessness, and willful disregard of another's rights. Bay Gen. Indus. v. Johnson, 418 A.2d 1050, 1980 D.C. App. LEXIS 349 (1980).

## § 16-3711. Judgment for defendant and determination of damages.

When, in an action of replevin, the issue is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against the plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages for their detention, or, on failure, that the defendant recover against the plaintiff and his surety the damages sustained by him. The damages shall be assessed by the jury trying the issue; or, where jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or he dismisses or fails to prosecute his suit, by a jury of inquest.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3711. 1973 Ed., § 16-3711.

### CASE NOTES

#### In general.

While the plaintiff in a replevin action invokes the jurisdiction of the court to obtain possession of property allegedly wrongfully detained, nothing precludes that party from dismissing or failing to prosecute the action. D.C. Code 1981, § 16-3711. *Headspeth v. Mercedes-Benz Credit Corp.*, 709 A.2d 717, 1998 D.C. App. LEXIS 59 (1998), writ of certiorari denied by 525 U.S. 1024, 119 S. Ct. 556, 142 L. Ed. 2d 463, 1998 U.S. LEXIS 7704, 67 U.S.L.W. 3362 (1998).

In event automobile was returned to successful counterclaimant in replevin action, absent additional consequential damage, measure of damages would be value of automobile at time it was seized under writ of replevin, less its value when returned; however, in event automobile was not returned to counterclaimant, measure of damages would be value of the

automobile when seized; and in either case counterclaimant must be compensated for any depreciation in value of automobile while in plaintiff's possession. D.C. Code § 16-3711. *Streule v. Gulf Finance Corp.*, 289 A.2d 15, 1972 D.C. App. LEXIS 360 (1972).

Should the plaintiff, who wrongfully replevied automobile, fail to deliver the automobile back to defendant, amount of damages sustained by defendant would not necessarily be measured by the unpaid balance of defendant's lien against the automobile, since the automobile's value might not equal that amount; rather, the defendant's damages would have to be computed and judgment therefor entered against plaintiff and his surety. D.C. Code § 16-3740. *Streule v. Gulf Finance Corp.*, 265 A.2d 298, 1970 D.C. App. LEXIS 277 (App. 1970).

### § 16-3712. Verdict where goods are eloigned.

If the defendant in an action of replevin has eloigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3712. 1973 Ed., § 16-3712.

### § 16-3713. Judgment where goods are eloigned.

The judgment in a case where the defendant has eloigned the goods sued for, shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3713. 1973 Ed., § 16-3713.

### CASE NOTES

#### In general.

Creditor did not lose right to self-help repossession of automobile under retail installment contract by filing replevin action against debtor. D.C. Code 1981, §§ 16-3701, 16-3713.

*Headspeth v. Mercedes-Benz Credit Corp.*, 709 A.2d 717, 1998 D.C. App. LEXIS 59 (1998), writ of certiorari denied by 525 U.S. 1024, 119 S. Ct. 556, 142 L. Ed. 2d 463, 1998 U.S. LEXIS 7704, 67 U.S.L.W. 3362 (1998).



**§§ 16-3731 to 16-3740. Jurisdiction; form of complaint; affidavit; contents; undertaking to abide judgment of the court; failure of officer to obtain possession; publication against defendant; default; retention of property by marshal; sufficiency of undertaking, quashing writ, and return of property; motion for return of property; procedure; objection to sufficiency of security; determination and measure of plaintiff's damages; judgment for defendant and determination of damages [REPEALED].**

Repealed.

(July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(o)(1).)

**Prior Codifications.** — 1981 Ed., §§ 16-3731 to 16-3740.

CHAPTER 39. SMALL CLAIMS AND CONCILIATION PROCEDURE  
IN SUPERIOR COURT.

Sec.

- 16-3901. Practice; applicability of other laws and rules of court.
- 16-3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff.
- 16-3903. Fees and costs; waiver.
- 16-3904. Set-off or counterclaim; pleading; retention of jurisdiction.
- 16-3905. Jury trial; demand; assignment to regular branch.

Sec.

- 16-3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition.
- 16-3907. Judgment; stay; installment payments; enforcement.
- 16-3908. Judgment for wages; oral examination; payment.
- 16-3909. Award of costs.
- 16-3910. Other rights of judgment creditor.

**§ 16-3901. Practice; applicability of other laws and rules of court.**

All provisions of law relating to the Superior Court of the District of Columbia and the rules of the court apply to the Small Claims and Conciliation Branch of the court as far as they may be applicable and are not in conflict with this chapter or Chapter 13 of Title 11. In case of conflict, this chapter and chapter 13 of Title 11 control.

(Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(2).)

**Prior Codifications.** — 1981 Ed., § 16-3901. 1973 Ed., § 16-3901.

**§ 16-3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff.**

(a) Actions shall be commenced in the Small Claims and Conciliation Branch by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially authorized by the Clerk of the Small Claims and Conciliation Branch or appointed by the judge for that purpose.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in



an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned, the clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon the defendant.

(c) When notice is served by a private individual, as provided by subsection (a) of this section, he shall make proof of service by affidavit before the clerk, showing the time and place of the service.

(d) When notice is served by the marshal, or by registered mail or by certified mail, the actual cost of service is taxable as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

## SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

### SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in  
courthouse)

(Address of  
court)

Washington, D.C. \_\_\_\_\_

Plaintiff \_\_\_\_\_

Address \_\_\_\_\_

No. \_\_\_\_\_

vs. \_\_\_\_\_

Defendant

### STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:) DISTRICT OF COLUMBIA, ss: \_\_\_\_\_ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense. \_\_\_\_\_ Plaintiff (or agent)

Subscribed and sworn to before me this \_\_\_\_\_ days of \_\_\_\_\_, 19\_\_\_\_. \_\_\_\_\_ Clerk (or notary public)

### NOTICE

To: \_\_\_\_\_

Defendant

Home address

Business address

You are hereby notified that \_\_\_\_\_ has made a claim and is requesting judgment against you in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_), as shown by the foregoing statement. The Court will hold a hearing

upon this claim on \_\_\_\_\_ at \_\_\_\_m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] \_\_\_\_\_ Clerk of the Small Claims and Conciliation Branch, Superior Court of the District of Columbia

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, not less than 5 nor more than 30 days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the Branch shall be made returnable therein.

(h) Where the defendant is the District of Columbia or an officer or agency thereof, the Clerk shall schedule the hearing for a day that is not less than 30 days from the date of the filing of the action, service of a copy of the action on the Corporation Counsel to be completed within 15 days of filing.

(Dec. 23, 1963, 77 Stat. 608, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(3); Mar. 21, 1995, D.C. Law 10-230, § 2, 42 DCR 11.)

**Cross references.** — Certified mail return receipts as prima facie evidence of delivery, see § 14-506.

**Prior Codifications.** — 1981 Ed., § 16-3902.

1973 Ed., § 16-3902.

**Legislative history of Law 10-230.** — Law 10-230, the “Small Claims Service of Process Act of 1994,” was introduced in Council and

assigned Bill No. 10-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 6, 1994, it was assigned Act No. 10-371 and transmitted to both Houses of Congress for its review. D.C. Law 10-230 became effective on March 21, 1995.

## § 16-3903. Fees and costs; waiver.

Fees for processing actions in the Small Claims Branch shall be set as the court prescribes. The judge sitting in the Branch may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be “Prepayment of costs waived,” or “Costs waived.” The term “pauper” or “in forma pauperis” may not be employed in the Branch. If a



party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch.

(Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(4); July 23, 1992, D.C. Law 9-134, § 104, 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 104, 39 DCR 4895.)

**Cross references.** — Fees and costs in civil actions, see § 15-701 et seq.

**Prior Codifications.** — 1981 Ed., § 16-3903.

1973 Ed., § 16-3903.

**Legislative history of Law 9-134.** — Law 9-134, the “Omnibus Budget Support Temporary Act of 1992,” was introduced in Council and assigned Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its re-

view. D.C. Law 9-134 became effective on July 23, 1992.

**Legislative history of Law 9-145.** — Law 9-145, the “Omnibus Budget Support Act of 1992,” was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

## § 16-3904. Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch, as provided by section 11-1321, but within the jurisdiction of the Superior Court, the action shall nevertheless remain in the Branch and be tried therein in its entirety.

(Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(5).)

**Prior Codifications.** — 1981 Ed., § 16-3904.

1973 Ed., § 16-3904.

### CASE NOTES

#### In general.

Small claims court did not have jurisdiction to entertain cross claim in excess of \$2,000, under D.C. Code 1981 §§ 11-1321, 16-3904, notwithstanding fact that jurisdictional limitation did not apply to setoffs and counterclaims. *McCray v. McGee*, 504 A.2d 1128, 1986 D.C. App. LEXIS 289 (1986).

\$2,000 jurisdictional limitation for small claims court does not apply to setoffs and counterclaims under D.C. Code 1981 §§ 11-1321,

16-3904. *McCray v. McGee*, 504 A.2d 1128, 1986 D.C. App. LEXIS 289 (1986).

In union's action to recover special strike assessment, the defendant's setoff for his payments on initiation fee which were not credited to his union account was properly before the court under statute authorizing the judge in small claims action to hear either a setoff or a counterclaim by formal pleading or, in his discretion, may waive the formal pleading. D.C. Code § 16-3904. *National Asso. of Broadcast*

**§ 16-3905** PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Employees & Technicians v. Timberlake, 409  
A.2d 629, 1979 D.C. App. LEXIS 523 (1979).

**§ 16-3905. Jury trial; demand; assignment to regular branch.**

In a case filed or pending in the Small Claims and Conciliation Branch in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials.

(Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(4).)

**Prior Codifications.** — 1981 Ed., § 16-3905. 1973 Ed., § 16-3905.

**§ 16-3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition.**

(a) On the return day specified by subsection (g) of section 16-3902, or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this chapter, the judge shall make an earnest effort to settle the controversy by conciliation. If he fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 16-3902(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice requires.

(Dec. 23, 1963, 77 Stat. 610, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3906. 1973 Ed., § 16-3906.

**CASE NOTES**

**In general.** Conciliation efforts in small claims branch are mandatory, and settlements are strongly favored. D.C. Code 1973, §§ 11-1322, 16-



3906(a); Small Claims Conciliation Rules 1-4. *Leiken v. Wilson*, 445 A.2d 993, 1982 D.C. App. LEXIS 365 (1982).

Court may direct verdict where opening statement of plaintiff reveals that no cause of action exists; such principle applies to jury-waived cases, including trials in small claims branch. *Eytan v. Bach*, 374 A.2d 879, 1977 D.C. App. LEXIS 336 (1977).

It was immaterial that defendant did not formally move for summary judgment before receiving favorable ruling in small claims court, but rather was awarded judgment by court sua sponte, since informal procedures govern and relevant inquiry is whether "substantial justice" has been achieved. D.C. Code SCR, SC Rule 12(a, b). *Eytan v. Bach*, 374 A.2d 879, 1977 D.C. App. LEXIS 336 (1977).

## § 16-3907. Judgment; stay; installment payments; enforcement.

When judgment is to be rendered in an action pursuant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the Superior Court of the District of Columbia for the enforcement of the judgment.

(Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 564, Pub. L. 91-358, title I, § 145(p)(6); Mar. 24, 1998, D.C. Law 12-81, § 10(pp), 45 DCR 745.)

**Prior Codifications.** — 1981 Ed., § 16-3907.

1973 Ed., § 16-3907.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

### CASE NOTES

#### Construction and application.

A judgment creditor has a property interest in a judgment; a statute states that the party in whose favor the judgment has been entered may avail himself of all remedies otherwise

available in the Superior Court for the enforcement of the judgment. *K.C. Enter. v. Jennings*, 851 A.2d 426, 2004 D.C. App. LEXIS 275 (2004).

## § 16-3908. Judgment for wages; oral examination; payment.

When a judgment rendered in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than

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once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

(Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3908. 1973 Ed., § 16-3908.  
3908.

**§ 16-3909. Award of costs.**

In the action pursuant to this chapter, the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party.

(Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-3909. 1973 Ed., § 16-3909.  
3909.

**§ 16-3910. Other rights of judgment creditor.**

Except as otherwise provided by this chapter or the rules of the court, a party obtaining a judgment in the Small Claims and Conciliation Branch is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court.

(Dec. 23, 1963, 77 Stat. 611, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 145(p)(7).)

**Prior Codifications.** — 1981 Ed., § 16-3910. 1973 Ed., § 16-3910.  
3910.



## CHAPTER 40. COLLABORATIVE LAW; UNIFORM ACT.

Sec.	Sec.
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16-4005. Beginning and concluding collaborative law process.	16-4016. Confidentiality of collaborative law communication.
16-4006. Proceedings pending before tribunal; status report.	16-4017. Privilege against disclosure for collaborative law communication; admissibility; discovery.
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16-4008. Approval of agreement by tribunal.	16-4019. Limits of privilege.
16-4009. Disqualification of collaborative lawyer and lawyers in associated law firm.	16-4020. Authority of tribunal in case of non-compliance.
16-4010. Low-income parties.	16-4021. Uniformity of application and construction.
16-4011. Governmental entity as party.	16-4022. Relation to Electronic Signatures in Global and National Commerce Act.
16-4012. Disclosure of information.	
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## § 16-4001. Short title.

This chapter may be cited as the “Uniform Collaborative Law Act”.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — Law 19-125, the “Uniform Collaborative Law Act of 2012”, was introduced in Council and assigned Bill No. 19-43, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 2012, and February 7, 2012, respectively.

Signed by the Mayor on March 1, 2012, it was assigned Act No. 19-319 and transmitted to both Houses of Congress for its review. D.C. Law 19-125 became effective on May 9, 2012.

**Editor’s notes.** — Uniform Law: This section is based on § 1 of the Uniform Collaborative Law Act.

## § 16-4002. Definitions.

For the purposes of this chapter, the term

(1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:

(A) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(B) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(A) Sign a collaborative law participation agreement; and

(B) Are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding,

which is described in a collaborative law participation agreement and arises under the family or domestic relations law of the District of Columbia, including:

(A) Marriage, divorce, dissolution, annulment, and property distribution;

(B) Child custody, visitation, and parenting time;

(C) Alimony, maintenance, and child support;

(D) Adoption;

(E) Parentage; and

(F) Premarital, marital, and post-marital agreements.

(6) “Family member” means a person:

(A) With whom an individual shares or has shared a mutual residence;

or

(B) Who is related to an individual by blood, adoption, or legal custody;

or

(C) Who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with an individual.

(7) “Law firm” means:

(A) Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(8) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

(9) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(10) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) “Proceeding” means a proceeding before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.

(12) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(15) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.



(16) “Tribunal” means a court, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor’s notes.** — Uniform Law: This section is based on § 2 of the Uniform Collaborative Law Act.

### § 16-4003. Applicability.

This chapter applies to a collaborative law participation agreement that meets the requirements of § 16-4004 signed on or after the effective date of this chapter [May 9, 2012].

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor’s notes.** — Uniform Law: This section is based on § 3 of the Uniform Collaborative Law Act.

### § 16-4004. Collaborative law participation agreement; requirements.

- (a) A collaborative law participation agreement shall:
- (1) Be in a record;
  - (2) Be signed by the parties;
  - (3) State the parties’ intention to resolve a collaborative matter through a collaborative law process under this chapter;
  - (4) Describe the nature and scope of the matter;
  - (5) Identify the collaborative lawyer who represents each party in the process; and
- (b) Contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process.
- (b) The parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor’s notes.** — Uniform Law: This section is based on § 4 of the Uniform Collaborative Law Act.

### § 16-4005. Beginning and concluding collaborative law process.

- (a) A collaborative law process begins when the parties sign a collaborative law participation agreement.
- (b) The tribunal may not order a party to participate in a collaborative law process over that party’s objection.

(c) A collaborative law process is concluded by:

(1) The resolution of a collaborative matter as evidenced by a signed record;

(2) The resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) The termination of the process.

(d) A collaborative law process terminates:

(1) When a party gives notice to other parties in a record that the process is ended; or

(2) When a party:

(A) Begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) In a pending proceeding related to the matter:

(i) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) Requests that the proceeding be put on the tribunal's calendar; or

(iii) Takes similar action requiring notice to be sent to the parties; or

(3) Except as otherwise provided by subsection (g) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) of this section is sent to the parties:

(1) The unrepresented party engages a successor collaborative lawyer; and

(2) In a signed record:

(A) The parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) The agreement is amended to identify the successor collaborative lawyer; and

(C) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests the tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 5 of the Uniform Collaborative Law Act.



## § 16-4006. Proceedings pending before tribunal; status report.

(a) Persons in a proceeding pending before the tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) of this section and §§ 16-4007 and 16-4008, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) of this section is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) The tribunal in which a proceeding is stayed under subsection (a) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) The tribunal may not consider a communication made in violation of subsection (c) of this section.

(e) The court shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 6 of the Uniform Collaborative Law Act.

## § 16-4007. Emergency order.

During a collaborative law process, the tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance with subchapter I of Chapter 10 of this title.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 7 of the Uniform Collaborative Law Act.

## § 16-4008. Approval of agreement by tribunal.

The tribunal may approve an agreement resulting from a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

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**Editor's notes.** — Uniform Law: This section is based on § 8 of the Uniform Collaborative Law Act.

## § 16-4009. Disqualification of collaborative lawyer and lawyers in associated law firm.

(a) Except as otherwise provided in subsection (c) of this section, a collaborative lawyer is disqualified from appearing before the tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) of this section and §§ 16-4010 and 16-4011, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before the tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a) of this section.

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) To ask the tribunal to approve an agreement resulting from the collaborative law process; or

(2) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance with subchapter I of Chapter 10 of this title, if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family member only until that person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 9 of the Uniform Collaborative Law Act.

## § 16-4010. Low-income parties.

(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under § 16-4009(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) The collaborative law participation agreement so provides; and

(3) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through



procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 10 of the Uniform Collaborative Law Act.

## § 16-4011. Governmental entity as party.

(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(1) The collaborative law participation agreement so provides; and

(2) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such-participation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 11 of the Uniform Collaborative Law Act.

## § 16-4012. Disclosure of information.

Except as provided by law other than this chapter, during the collaborative law process, upon the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 12 of the Uniform Collaborative Law Act.

## § 16-4013. Standards of professional responsibility and mandatory reporting not affected.

This chapter does not affect:

(1) The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) The obligation of a person to report abuse, neglect, abandonment, or exploitation of a child or adult under the law of the District of Columbia.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 13 of the Uniform Collaborative Law Act.

## § 16-4014. Appropriateness of collaborative law process.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) Advise the prospective party that:

(A) If, after signing an agreement, a party initiates a proceeding or seeks intervention by the tribunal in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(B) Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before the tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by § 16-4009(c), § 16-4010(b), or § 16-4011(b).

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 14 of the Uniform Collaborative Law Act.

## § 16-4015. Coercive or violent relationship.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer



represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(1) The party or the prospective party requests beginning or continuing the process; and

(2) The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during the process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 15 of the Uniform Collaborative Law Act.

## **§ 16-4016. Confidentiality of collaborative law communication.**

A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of the District of Columbia other than this chapter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 16 of the Uniform Collaborative Law Act.

## **§ 16-4017. Privilege against disclosure for collaborative law communication; admissibility; discovery.**

(a) Subject to §§ 16-4018 and 16-4019, a collaborative law communication is privileged under subsection (b) of this section, is not subject to discovery, and is not admissible as evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 17 of the Uniform Collaborative Law Act.

## **§ 16-4018. Waiver and preclusion of privilege.**

(a) A privilege under § 16-4017 may be waived in a record or orally during

a proceeding if it is expressly waived by all parties entitled to claim the privilege at issue and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under § 16-4017, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 18 of the Uniform Collaborative Law Act.

## § 16-4019. Limits of privilege.

(a) There is no privilege under § 16-4017 for a collaborative law communication that is:

(1) Available to the public under the District of Columbia Public Records Management Act of 1985, effective September 5, 1985 (D.C. Law 6-19; D.C. Official Code § 2-1701 et seq.), or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(4) In an agreement resulting from the collaborative law process evidenced by a record signed by all parties to the agreement; or

(5) A disclosure in a report of suspected domestic violence to an appropriate agency under subchapter I of Chapter 10 of this title.

(b) The privileges under § 16-4017 for a collaborative law communication do not apply to the extent that a communication is:

(1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the District of Columbia is a party to or otherwise participates in the process.

(c) There is no privilege under § 16-4017 if the tribunal finds, after a hearing *in camera*, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) A judicial proceeding involving a felony or misdemeanor; or

(2) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under



subsection (b) or (c) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under § 16-4017 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection shall not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 19 of the Uniform Collaborative Law Act.

## § 16-4020. Authority of tribunal in case of noncompliance.

(a) If an agreement fails to meet the requirements of § 16-4004, or a lawyer fails to comply with § 16-4014 or § 16-4015, the tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(1) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) Reasonably believed they were participating in a collaborative law process.

(b) If the tribunal makes the findings specified in subsection (a) of this section, and the interests of justice require, the tribunal may:

(1) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) Apply the disqualification provisions of §§ 16-4009, 16-4010, and 16-4011; and

(3) Apply a privilege under § 16-4017.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 20 of the Uniform Collaborative Law Act.

## § 16-4021. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 21 of the Uniform Collaborative Law Act.

## § 16-4022. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

**Legislative history of Law 19-125.** — For history of Law 19-125, see notes under § 16-4001.

**Editor's notes.** — Uniform Law: This section is based on § 22 of the Uniform Collaborative Law Act.



## CHAPTER 41. SURETIES.

Sec.

16-4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office.

Sec.

16-4102. Subrogation of surety satisfying judgment.

**§ 16-4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office.**

When the surety, or his personal representatives, of an officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond apprehends himself to be in danger of suffering from the suretyship, and petitions the court to be relieved from the suretyship, or that the court require the officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him. If he fails to do so by a day named, the court may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office of trust, and may thereupon, order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with the order by attachment.

(Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

**Cross references.** — Counter security by guardian, see § 21-118. 1973 Ed., § 16-4101.

**Prior Codifications.** — 1981 Ed., § 16-4101.

**§ 16-4102. Subrogation of surety satisfying judgment.**

Where a person recovers a judgment or money decree against the principal debtor and a surety or indorser, and the judgment is satisfied by the surety or indorser, the latter may have the judgment or money decree entered by the clerk to his use and have execution in his own name against the principal, and where a judgment or money decree is rendered against several sureties and one of them satisfies the whole debt, the surety satisfying the judgment may have the judgment or decree entered to his use, have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him. On the motion of the surety so paying the entire debt and notice to the other sureties, the court may determine for what amount execution shall issue against each of the other sureties.

(Dec. 23, 1963, 77 Stat. 612, Pub. L. 88-241, § 1.)

**Prior Codifications.** — 1981 Ed., § 16-4102. 1973 Ed., § 16-4102.

CASE NOTES

**In general.**

Automatic stay provision of Bankruptcy Code did not act to extinguish all previously issued writs of attachment on debtor's wages and did not give priority to first attachment filed after debt was determined to be nondischargeable by Bankruptcy Court; rather, stay only required

immediate cessation of payments to each garnishor, and thus, writ filed first in time before bankruptcy continued to have priority. D.C. Code 1981, § 16-572; Bankr.Code, 11 U.S.C. § 362. Rab v. Safeco Ins. Co., 556 A.2d 1072, 1989 D.C. App. LEXIS 56 (1989).



CHAPTER 42. MEDIATION; UNIFORM ACT.

Sec.	Sec.
16-4201. Definitions.	16-4209. Participation in mediation.
16-4202. Scope.	16-4210. International commercial mediation.
16-4203. Privilege against disclosure; admissibility; discovery.	16-4211. Relation to Electronic Signatures in Global and National Commerce Act.
16-4204. Waiver and preclusion of privilege.	16-4212. Uniformity of application and construction.
16-4205. Exceptions to privilege.	16-4213. Application to existing agreements or referrals.
16-4206. Prohibited mediator reports.	
16-4207. Confidentiality.	
16-4208. Mediator's disclosure of conflicts of interest; background.	

§ 16-4201. Definitions.

For the purposes of this chapter, the term:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(A) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(A) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — Law 16-87, the "Uniform Mediation Act of 2006", was introduced in Council and assigned Bill

No. 16-145 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and

January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-273 and transmitted to both Houses of Congress for its review. D.C. Law 16-87 became effective on April 4, 2006.

**Editor's notes.** — Uniform Law: This section is based upon § 2 of the Uniform Mediation Act.

## § 16-4202. Scope.

(a) Except as otherwise provided in subsection (b) or (c) of this section, this chapter applies to a mediation in which:

(1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(b) The chapter does not apply to a mediation:

(1) Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) Conducted by a judge who might make a ruling on the case; or

(4) Conducted under the auspices of:

(A) A primary or secondary school, if all the mediation parties are students;

(B) A correctional institution for youths, if all the mediation parties are residents of that institution; or

(C) The Office of the Attorney General for the District of Columbia or the Mayor, if the mediation arises from a consumer complaint under authority of Chapter 39 of Title 28 of the District of Columbia Official Code, and one of the mediation parties is the consumer complainant.

(c) If the mediation parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under §§ 16-4203 through 16-4205 shall not apply to the mediation or part agreed upon; provided, that §§ 16-4203 through 16-4205 shall apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Mediation Act.



# § 16-4203. Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in § 16-4205, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by § 16-4204.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Mediation Act.

# § 16-4204. Waiver and preclusion of privilege.

(a) A privilege under § 16-4203 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under § 16-4203, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity, is precluded from asserting a privilege under § 16-4203.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 5 of the Uniform Mediation Act.

**§ 16-4205. Exceptions to privilege.**

(a) There is no privilege under § 16-4203 for a mediation communication that is:

(1) In an agreement evidenced by a record signed by all parties to the agreement;

(2) Available to the public under § 1-207.42, or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) A threat or statement of a plan to inflict bodily injury as defined by § 22-407, or commit a crime of violence as defined by § 22-4501(f) [now § 22-4501(4)] and § 23-1331.

(4) Intentionally used to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) Except as otherwise provided in subsection (c) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under § 16-4203 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:

(1) The evidence is not otherwise available;

(2) There is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and

(3) The mediation communication is sought or offered in:

(A) A court proceeding involving a felony or misdemeanor; or

(B) Except as otherwise provided in subsection (c) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(3)(B) of this section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)



**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 6 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4206. Prohibited mediator reports.

(a) Except as permitted in subsection (b) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, arbitrator, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted under § 16-4205; or

(3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) of this section may not be considered by a court, administrative agency, arbitrator, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 7 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4207. Confidentiality.

Unless subject to § 1-207.42, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of the District of Columbia.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 8 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4208. Mediator's disclosure of conflicts of interest; background.

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) of this section is precluded by the violation from asserting a privilege under § 16-4203.

(e) Subsections (a), (b), (c), and (g) of this section do not apply to an individual acting as a judge or administrative law judge.

(f) This chapter does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) of this section to be disclosed, the parties agree otherwise.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201.

tion is based upon § 9 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4209. Participation in mediation.

(a) An attorney or other individual designated by a mediation party may accompany the party to and participate in a mediation.

(b) A waiver of participation given before the mediation may be rescinded.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201.

tion is based upon § 10 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4210. International commercial mediation.

(a) For the purposes of this section, the term:

(1) "International commercial mediation" means an international commercial conciliation as defined in Article 1 of the Model Law.

(2) "Model Law" means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on June 28, 2002 and recommended by the United Nations General Assembly in a resolution (A/RES/57/18) dated November 19, 2002.

(b) Except as otherwise provided in subsections (c) and (d) of this section, if a mediation is an international commercial mediation, the mediation is governed by the Model Law.

(c) Unless the mediation parties agree in accordance with § 16-4202(c) that all or part of an international commercial mediation is not privileged, §§ 16-4203, 16-4204, and 16-4205 and any applicable definitions in § 16-4201 also



apply to the mediation and nothing in Article 10 of the Model Law derogates from §§ 16-4203, 16-4204, and 16-4205.

(d) If the parties to an international commercial mediation agree under Article 1, subsection (7) of the Model Law that the Model Law does not apply, this chapter applies.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 11 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4211. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but this chapter does not modify, limit, or supersede section 101(c) of that act [15 U.S.C. § 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that act [15 U.S.C. § 7003(b)].

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 12 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4212. Uniformity of application and construction.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 13 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4213. Application to existing agreements or referrals.

On or after January 1, 2007, this chapter governs a mediation pursuant to a referral or an agreement to mediate, whenever made.

(Apr. 4, 2006, D.C. Law 16-87, § 2(b), 53 DCR 1075.)

**Legislative history of Law 16-87.** — For Law 16-87, see notes following § 16-4201. tion is based upon § 17 of the Uniform Mediation Act.

**Editor's notes.** — Uniform Law: This sec-

CHAPTER 43. ARBITRATION [REPEALED].

Sec.

16-4301 to 16-4319. [Repealed].

§ 16-4301. Validity of arbitration agreement. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 2, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4301.

1973 Ed., T. 16, Appx., § 2.

**Legislative history of Law 1-117.** — Law 1-117, the “Uniform Arbitration Act,” was introduced in Council and assigned Bill No. 1-140, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on November 23, 1976, and December 7, 1976, respectively. Enacted without signature by the Mayor on January 13, 1977, it was assigned Act No. 1-209 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-85.** — Law 3-85, the “Enacted Titles Numbering and

Amendment Act of 1980,” was introduced in Council and assigned Bill No. 3-296, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-202 and transmitted to both Houses of Congress for its review.

**Editor’s notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: “Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed.”

Uniform Law: This section is based upon § 1 of the Uniform Arbitration Act.

§ 16-4302. Proceedings to compel or stay arbitration. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 3, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4302.

1973 Ed., T. 16, Appx., § 3.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor’s notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: “Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed.”

Uniform Law: This section is based upon § 2 of the Uniform Arbitration Act.

§ 16-4303. Appointment of arbitrators by Court. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 4, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)



**Prior Codifications.** — 1981 Ed., § 16-4303.

1973 Ed., T. 16, Appx., § 4.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 3 of the Uniform Arbitration Act.

## § 16-4304. Majority action by arbitrators. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 5, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4304.

1973 Ed., T. 16, Appx., § 5.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 4 of the Uniform Arbitration Act.

## § 16-4305. Hearing. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 6, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4305.

1973 Ed., T. 16, Appx., § 6.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 5 of the Uniform Arbitration Act.

## § 16-4306. Representation by attorney. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 7, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4306.

1973 Ed., T. 16, Appx., § 7.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

Uniform Law: This section is based upon § 6 of the Uniform Arbitration Act.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 6 of the Uniform Arbitration Act.

## § 16-4307. Witnesses, subpoenas, depositions. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 8, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4307.

1973 Ed., T. 16, Appx., § 8.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 7 of the Uniform Arbitration Act.

## § 16-4308. Award. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 9, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4308.

1973 Ed., T. 16, Appx., § 9.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27,

2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 8 of the Uniform Arbitration Act.

## § 16-4309. Change of award by arbitrators. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 10, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Apr. 30, 1988, D.C. Law 7-104, § 4(u), 35 DCR 147; Mar. 24, 1998, D.C. Law 12-81, § 10(qq), 45 DCR 745; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4309.

1973 Ed., T. 16, Appx., § 10.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987,"

was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 12-81.** — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-



tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 9 of the Uniform Arbitration Act.

## § 16-4310. Fees and expenses of arbitration. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 11, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4310.

1973 Ed., T. 16, Appx., § 11.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 10 of the Uniform Arbitration Act.

## § 16-4311. Vacating an award. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 12, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4311.

1973 Ed., T. 16, Appx., § 12.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 12 of the Uniform Arbitration Act.

## § 16-4312. Modification or correction of award. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 13, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4312.

1973 Ed., T. 16, Appx., § 13.

**Legislative history of Law 1-117.** — For

legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 13 of the Uniform Arbitration Act.

## § 16-4313. Judgment or decree on award. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 14, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4313.

1973 Ed., T. 16, Appx., § 14.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 14 of the Uniform Arbitration Act.

## § 16-4314. Docketing of judgments. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 15, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4314.

1973 Ed., T. 16, Appx., § 15.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 15(b) of the Uniform Arbitration Act.

## § 16-4315. Applications to Court. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 16, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4315.

1973 Ed., T. 16, Appx., § 16.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.



**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 16 of the Uniform Arbitration Act.

## § 16-4316. Court. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 17, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4316.

1973 Ed., T. 16, Appx., § 17.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 17 of the Uniform Arbitration Act.

## § 16-4317. Appeals. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 18, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Mar. 24, 1998, D.C. Law 12-81, § 10(rr), 45 DCR 745; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4317.

1973 Ed., T. 16, Appx., § 18.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 12-81.** — For

legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 16-4309.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 19 of the Uniform Arbitration Act.

## § 16-4318. Prospective applicability to agreements. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 19, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Prior Codifications.** — 1981 Ed., § 16-4318.

1973 Ed., T. 16, Appx., § 19.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see His-

torical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

§ 16-4319 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 20 of the Uniform Arbitration Act.

§ 16-4319. Construction. [Repealed].

Repealed.

(Apr. 7, 1977, D.C. Law 1-117, § 20, 23 DCR 9690; Sept. 6, 1980, D.C. Law 3-85, § 2(a), (c), 27 DCR 2900; Feb. 27, 2008, D.C. Law 17-111, § 3, 55 DCR 1847.)

**Cross references.** — Merit system grievance procedure, appeals from arbitration awards, see § 1-605.02.

**Prior Codifications.** — 1981 Ed., § 16-4319.

1973 Ed., T. 16, Appx., § 20.

**Legislative history of Law 1-117.** — For legislative history of D.C. Law 1-117, see Historical and Statutory Notes following § 16-4301.

**Legislative history of Law 3-85.** — For legislative history of D.C. Law 3-85, see Historical and Statutory Notes following § 16-4301.

**Editor's notes.** — Repeal of Uniform Arbitration Act: D.C. Law 17-111, § 3, Feb. 27, 2008, 55 DCR 1847, provided: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed."

Uniform Law: This section is based upon § 21 of the Uniform Arbitration Act.



## CHAPTER 44. ARBITRATION; REVISED UNIFORM ACT.

Sec.	Sec.
16-4401. Definitions.	16-4418. Judicial enforcement of preaward ruling by arbitrator.
16-4402. Notice.	16-4419. Award.
16-4403. When chapter applies.	16-4420. Change of award by arbitrator.
16-4404. Effect of agreement to arbitrate; nonwaivable provisions.	16-4421. Remedies; fees and expenses of arbitration proceeding.
16-4405. Application for judicial relief.	16-4422. Confirmation of award.
16-4406. Validity of agreement to arbitrate.	16-4423. Vacating award.
16-4407. Motion to compel or stay arbitration.	16-4424. Modification or correction of award.
16-4408. Provisional remedies.	16-4425. Judgment on award; attorney's fees and litigation expenses.
16-4409. Initiation of arbitration.	16-4426. Jurisdiction.
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16-4411. Appointment of arbitrator; service as a neutral arbitrator.	16-4428. Uniformity of application and construction.
16-4412. Disclosure by arbitrator.	16-4429. Relationship to Electronic Signatures in Global and National Commerce Act.
16-4413. Action by majority.	16-4430. Regulation of arbitration organizations.
16-4414. Immunity of arbitrator; competency to testify; attorney's fees and costs.	16-4431. Disclosure of arbitration costs.
16-4415. Arbitration process.	16-4432. Savings clause.
16-4416. Representation by lawyer.	
16-4417. Witnesses; subpoenas; depositions; discovery.	

## § 16-4401. Definitions.

For the purposes of this chapter, the term:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Consumer" means a party to an arbitration agreement who, in the context of that arbitration agreement, is an individual, not a business, who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, healthcare services, or real property.

(4) "Consumer arbitration agreement" means a standardized contract, written by one party, with a provision requiring that disputes arising after the contract's signing shall be submitted to binding arbitration, and the other party is a consumer.

(5) "Court" means the Superior Court of the District of Columbia.

(6) "Financial interest" means:

(A) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management of the business; or

(B) Ownership of more than 5% interest in a business.

(7) "Knowledge" means actual knowledge.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — Law 17-111, the “Arbitration Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-50 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on October 2, 2007, and December 11, 2007, respectively. Signed by the Mayor on December

31, 2007, it was assigned Act No. 17-236 and transmitted to both Houses of Congress for its review. D.C. Law 17-111 became effective on February 27, 2008.

**Editor’s notes.** — Uniform Law: This section is based upon § 1 of the Uniform Arbitration Act (2000).

## § 16-4402. Notice.

(a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person’s attention or the notice is delivered at the person’s place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor’s notes.** — Uniform Law: This sec-

tion is based upon § 2 of the Uniform Arbitration Act (2000).

## § 16-4403. When chapter applies.

(a) This chapter governs an agreement to arbitrate made on or after [February 27, 2008].

(b) This chapter governs an agreement to arbitrate made before [February 27, 2008] if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c)(1) Any provision in an insurance policy with a consumer that requires binding arbitration is void and unenforceable.

(2) An insurance policy with a consumer may permit the resolution of disputes through arbitration; provided, that:

(A) The decision to arbitrate is made by the parties at the time a dispute arises; and

(B) The decision whether to arbitrate is not a condition for continued policy coverage under the same terms that otherwise would apply.

(3) If the parties to an insurance policy with a consumer elect to arbitrate, the provisions of this chapter shall apply.

(d) A provision for mandatory binding arbitration within a consumer



arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.

(e) On or after July 1, 2009, this chapter governs an agreement to arbitrate whenever made.

(f)(1) This chapter does not apply to any arbitrator or any arbitration organization in an arbitration proceeding governed by rules adopted by a securities self-regulatory organization; provided, that the rules are approved by the United States Securities and Exchange Commission under federal law.

(2) For the purposes of this paragraph, the term “securities self-regulatory organization” means:

(A) A securities exchange registered under the federal Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. § 78a et seq.) (“Securities Exchange Act”);

(B) A national securities association of broker-dealers registered under the Securities Exchange Act;

(C) A clearing agency registered under the Securities Exchange Act; or

(D) The Municipal Securities Rulemaking Board established under the Securities Exchange Act.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor’s notes.** — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Arbitration Act (2000).

#### CASE NOTES

##### **Construction and application.**

Revised Uniform Arbitration Act (RUAA), not Uniform Arbitration Act (UAA), governed whether party to arbitration agreement had effectively withdrawn from agreement, even though agreement had been made before adoption of RUAA, since UAA had been fully re-

pealed; savings clause in RUAA, stating that RUAA did not affect an action or proceeding commenced or right accrued before RUAA’s effective date, did not apply after date of UAA’s full repeal. *Menna v. Plymouth Rock Assur. Corp.*, 987 A.2d 458, 2010 D.C. App. LEXIS 9 (2010).

### **§ 16-4404. Effect of agreement to arbitrate; nonwaivable provisions.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of §§ 16-4403(d) and (e), 16-4405, 16-4406(a) or (c), 16-4408, 16-4409, 16-4412, 16-4417(a), 16-4417(b), 16-4421, 16-4426, or 16-4427; or

(2) Waive the right under § 16-4416 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or §§ 16-4403(a) or (c), 16-4407, 16-4414, 16-4418, 16-4419, 16-4420(d) or (e), 16-4422, 16-4423, 16-4424, 16-4425, and 16-4429, except that, if there is an agreement to arbitrate disputes over insurance obligations by and between 2 or more insurers, reinsurers, self-insurers, or reinsurance intermediaries, or any combination of them, the parties to the agreement may waive the right to vacatur under § 16-4423.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 4 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4405. Application for judicial relief.

(a) Except as otherwise provided in § 16-4427, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 5 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4406. Validity of agreement to arbitrate.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)



**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 6 of the Uniform Arbitration Act (2000).

## \*CASE NOTES

### ANALYSIS

#### Consent.

Construction and application.

Construction with federal law.

Construction with other laws.

Duties of arbitrator.

Elements of agreement.

Fraud.

In general.

Presumptions and burden of proof.

Review.

Weight and sufficiency of evidence.

#### Consent.

Arbitration clause in employment agreement was not unconscionable under District of Columbia law, where employee had the opportunity to read and understand the agreement before he signed it, and there was no evidence that he was compelled to sign the agreement out of a fear of unemployment. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Under District of Columbia law, arbitration is predicated upon consent of parties to dispute, and determination of whether parties have consented to arbitrate matter is to be determined by courts on basis of contracts between parties. *Brown v. Dorsey & Whitney, LLP*, 267 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 10132 (2003).

Employer did not have affirmative duty under District of Columbia law to discuss and explain arbitration clause of employment agreement with employee, and, thus, employer's failure to do so did not invalidate agreement, where employee signed contract. *Nelson v. Insignia/ESG, Inc.*, 215 F.Supp.2d 143, 2002 U.S. Dist. LEXIS 14829 (2002).

Although the legal basis or nature of a cause of action does determine its arbitrability *vel non*, insofar as the allegations underlying the claims touch matters covered by the agreement to arbitrate, the claim must nonetheless come within the contemplation of the parties' agreement to arbitrate. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

If the court has positive assurance that the parties did not intend the dispute sub judice to be resolved through arbitration, then the court may not compel arbitration, because to do so

would be contrary to the parties' agreement. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Because arbitration is a matter of contract, a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Act of respondent when, instead of raising an objection, either by way of application to stay arbitration or by specific objection before arbitrators, he participated in arbitration held in accordance with the construction industry arbitration rules of the American Arbitration Association amounted to an effective consent to scope of claimant's arbitral submission and, as such, constituted a waiver of any defense to confirmation of award against him individually as void on basis of a lack of an agreement to arbitrate. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

#### Construction and application.

Pursuant to severability provision of employment agreement, unenforceable provision in arbitration clause of agreement excluding punitive damages as remedy in arbitration would be severed, so as to permit enforcement of clause in employment discrimination suit brought under the District of Columbia Human Rights Act (DCHRA), where there was no evidence that employer drafted the agreement, or the arbitration clause specifically, in bad faith or in an attempt to contravene public policy, and the agreement was not permeated with invalid provisions. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Broad language of the arbitration clause, referring to "[a]ny dispute or claim arising out of or relating to Employee's employment or any provision of this Agreement, whether based on contract or tort or otherwise," covered constructive discharge claim based on District of Columbia Human Rights Act (DCHRA). *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Employer had offered to pay all fees and expenses of mediator, and if necessary, arbitrator, and, thus, arbitration clause of employment contract which stated that employer and employee would split arbitration costs did not render such clause unenforceable. *Nelson v. Insignia/ESG, Inc.*, 215 F.Supp.2d 143, 2002 U.S. Dist. LEXIS 14829 (2002).

Former employee's claims under District of Columbia law of race and sex discrimination and retaliation were encompassed by arbitration agreement clause stating that any dispute arising out or related to employment agreement, terms or conditions of employment or termination of such employment would be subject to binding arbitration. *Nelson v. Insignia/ESG, Inc.*, 215 F.Supp.2d 143, 2002 U.S. Dist. LEXIS 14829 (2002).

Ordinarily, on a motion to compel arbitration, the threshold question of whether a valid arbitration agreement exists is also the end of the court's inquiry. *Menna v. Plymouth Rock Assur. Corp.*, 987 A.2d 458, 2010 D.C. App. LEXIS 9 (2010).

Omission of word "arbitration" from clauses in purchase agreement and certificate of limited warranty which required submission of dispute involving delivery of condominium to purchaser in accordance with construction plans be submitted to project architect for resolution did not negate existence of arbitration agreement with respect to those types of disputes. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

The District of Columbia Uniform Arbitration Act (DCAA) does not limit the matters that may be subject to arbitration, referring broadly to agreements to arbitrate "any existing controversy" or "any controversy thereafter arising," so long as it is in writing. *Washington Automotive Co. v.*, 906 A.2d 869 (1828).

A will establishing a marital trust, which will directed that any material difference of opinion among the trustees of the marital trust would be resolved by arbitration, was not a written contract to submit controversies to arbitration, for purposes of District of Columbia's version of Uniform Arbitration Act, providing for immediate appeal of an interlocutory order denying an application to compel arbitration pursuant to a written contract. *In re Calomiris*, 894 A.2d 408, 2006 D.C. App. LEXIS 90 (2006).

Arbitrator did not exceed the scope of his authority under arbitration agreement between architectural firm and owner of office building by awarding firm money that it in turn owed to a subcontractor; even though the subcontractor provided evidence to support the firm's claims, it was not a party to the arbitration. *Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C.*, 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

Provision in religious organization's bylaws that stated that disputes between members and the congregation were to be submitted to a Beth Din of Orthodox Jewish rabbis for a binding decision according to Jewish law constituted an arbitration agreement within the meaning of the Uniform Arbitration Act, even though the provision did not specifically use the term "arbitration" or identify a specific person or entity as the arbitrator. *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

Agreement to arbitrate contained in securities registration application signed by employee was enforceable on employee's claim that she had been denied promotion based on her sex. *Benefits Communications Corp. v. Klieforth*, 642 A.2d 1299, 1994 D.C. App. LEXIS 91 (1994).

### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act, so long as there is no material difference in the statutory language between the two acts. *Giron v. Dodds*, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Interpretations of Federal Arbitration Act are persuasive authority for interpreting identical provisions of District of Columbia's version of Uniform Arbitration Act. 9 U.S.C. §§ 1-16; D.C. Code 1981, §§ 16-4301 to 16-4319. *Masurovsky v. Green*, 687 A.2d 198, 1996 D.C. App. LEXIS 294 (1996), amended by 1997 D.C. App. LEXIS 54 (D.C. Mar. 4, 1997).

### Construction with other laws.

In determining whether parties agreed to submit their dispute to arbitration, the court applies state-law principles applicable to the formation of contracts. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

### Duties of arbitrator.

Procedural defenses to taxi passenger's action to enforce arbitration agreement with tortfeasor's automobile insurer, that passenger had waived his right to arbitrate and that action was barred by three-year statute of limitations or laches, were for arbitrator, not trial court, to decide, since arbitration agreement invested arbitrator with authority to settle all points and controversies in parties' dispute,



including defenses from a party's alleged failure to proceed. *Menna v. Plymouth Rock Assur. Corp.*, 987 A.2d 458, 2010 D.C. App. LEXIS 9 (2010).

### Elements of agreement.

Arbitration agreement which subjected, at employer's option, all employment disputes to arbitration, including employee's statutory discrimination claims, was valid, given that agreement, through incorporation of American Arbitration Association (AAA) rules, provided for neutral arbitrators, provided for more than minimal discovery, required written award, provided for all of types of relief that would otherwise be available in court and did not require employee to pay either unreasonable costs or any arbitrators' fees or expenses as condition of access to arbitration forum; thus, employee could effectively vindicate his statutory cause of action in arbitration. *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1997 U.S. App. LEXIS 2223 (C.A.D.C. 1997).

Provision in arbitration clause of employment agreement excluding punitive damages as arbitration remedy was unenforceable in employment discrimination suit brought under the District of Columbia Human Rights Act (DCHRA). *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Discovery permitted under arbitration clause of employment agreement was adequate to render clause enforceable, where clause provided that arbitration would be conducted "pursuant to the commercial arbitration rules of the American Arbitration Association." *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Under District of Columbia law, arbitration clause in employment agreement was not rendered unenforceable for lack of mutuality of obligation in that employer was able to seek judicial injunctive relief while employee had to arbitrate all employment-related claims. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Because agreement to have third parties decide disputes is the essence of arbitration, no magic words such as "arbitrate" or "binding

arbitration" or "final dispute resolution" are needed to obtain the benefits of an arbitration clause. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Provision in commercial lease, that controversies over rental value, for purposes of lease's periodic adjustments of rent based on changes in fair market value, would be submitted to binding resolution by "disinterested" qualified appraisers, constituted an arbitration provision that was enforceable under District of Columbia Uniform Arbitration Act (DCAA), though such provision did not use the words "arbitration" or "arbitrator." *Washington Automotive Co. v.*, 906 A.2d 869 (1828).

### Fraud.

Except when party opposing arbitration denies existence of agreement to arbitrate, Uniform Arbitration Act requires court to order arbitration when applicant shows existence of valid agreement to arbitrate that is resisted by opposing party; claim of fraudulent inducement of arbitration clause of contract effectively "denies existence of the agreement to arbitrate," and must be resolved by the court. D.C. Code 1981, § 16-4302(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

If contractor's claim of fraud in the inducement of arbitration clause of construction project agreement were established, there would be no valid agreement to arbitrate and policies favoring arbitration would not apply. *Hercules & Co. v. Shama Restaurant Corp.*, 566 A.2d 31, 1989 D.C. App. LEXIS 230 (1989).

### In general.

Under District of Columbia law, arbitration is predicated upon the consent of the parties to a dispute, and the determination of whether the parties have consented to arbitrate is a matter to be determined by the courts on the basis of the contracts between the parties. *Bailey v. Fannie Mae*, 209 F.3d 740, 2000 U.S. App. LEXIS 7205 (C.A.D.C. 2000).

An arbitration agreement is enforceable only if it provides for all of the types of relief that would otherwise be available in court. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

One requirement for an enforceable arbitration agreement is that more than minimal discovery be permitted. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95

Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Under District of Columbia law, determination of whether parties have consented to arbitrate is matter to be determined by courts on basis of contract between parties. *Sapiro v. VeriSign*, 310 F.Supp.2d 208, 2004 U.S. Dist. LEXIS 4940 (2004).

Education and background of employee are taken into account in determining whether employee should be bound by arbitration agreement. *Brown v. Dorsey & Whitney, LLP*, 267 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 10132 (2003).

District of Columbia law applied to determination of whether arbitration clause of employment agreement was enforceable as both formation and performance of contract occurred in that jurisdiction. *Nelson v. Insignia/ESG, Inc.*, 215 F.Supp.2d 143, 2002 U.S. Dist. LEXIS 14829 (2002).

Court should give effect to arbitration clauses contained in freely negotiated contracts. *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319, 1989 U.S. Dist. LEXIS 14533 (1989).

Where a party challenges the arbitrability of a dispute, the court must first settle the basic contractual question of whether they have agreed to submit their dispute to arbitration. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Because arbitration becomes mandatory only by mutual consent of the parties, there must be an agreement between them, interpreted and governed by normal principles of contract law, which provides for arbitration. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

A written agreement to settle an existing or future dispute regarding the value of land or other property via an appraisal process is, for purposes of the District of Columbia Uniform Arbitration Act (DCAA), an "arbitration agreement" enforceable as provided in the DCAA and the Superior Court civil rule governing the confirmation of arbitration awards under the DCAA. *Washington Automotive Co. v.*, 906 A.2d 869 (1828).

Dispute between congregation members and religious organization regarding the governing structure of the organization, the ownership of property, and the fiduciary duties of organization's officers and directors fell within arbitration provision in organization's bylaws, which stated that disputes between members and the congregation were to be submitted to a Beth Din of Orthodox Jewish rabbis for a binding decision according to Jewish law; the provision applied to any claim of a member against the congregation that could not be resolved amicably and was sufficiently broad and all-encompassing to include the underlying disagree-

ments between the parties. *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

Right to compel arbitration can be waived like any other contract right. D.C. Code 1981, § 16-4301. *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

Party may obtain judicial determination regarding existence of agreement to arbitrate. D.C. Code 1981, § 16-4302. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

### Presumptions and burden of proof.

Under District of Columbia law, party asserting existence of contract to submit disputes to arbitration has burden of proving its existence. *Sapiro v. VeriSign*, 310 F.Supp.2d 208, 2004 U.S. Dist. LEXIS 4940 (2004).

Under District of Columbia law, party resisting arbitration bears burden of proving that claims at issue are unsuitable for arbitration. *Sapiro v. VeriSign*, 310 F.Supp.2d 208, 2004 U.S. Dist. LEXIS 4940 (2004).

If the arbitration clause can reasonably be interpreted as including the dispute at hand, the presumption in favor of arbitration, unless rebutted, will lead the court to order it to be resolved through arbitration, and it is precisely in cases where the court must interpret an ambiguous clause that the presumption becomes operative. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

The presumption in favor of arbitration arises only when the court has found that the parties have agreed to submit some disputes to arbitration. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

The presumption in favor of arbitration upon determining the existence of an enforceable clause is essentially a generalized inference of the parties' intent; courts will presume that an arbitration clause agreed upon by the parties was intended to foreclose judicial involvement in their disputes. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Upon a finding of the existence of an enforceable arbitration clause, a presumption in favor of arbitration attaches. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

If there is no dispute concerning the validity of the arbitration clause that is contained in the agreement or contract between the parties, a presumption in favor of arbitration attaches. *Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C.*, 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

A presumption of arbitrability as to any particular dispute arises once the existence of an enforceable agreement to arbitrate has been



determined; this presumption requires that an action to compel arbitration be sustained unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. *Mesheil v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

Once the basic question of arbitrability has been resolved in favor of arbitration, the strong policy embraced in the statute in favor of enforcement of arbitration agreements reverses the presumption so that it is for the arbitrator to resolve other gateway matters that the parties would likely expect the arbitrator to decide; this includes procedural questions which grow out of the dispute and bear on its final disposition and allegations of waiver, delay, or a like defense to arbitrability. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Presumption favoring arbitration does not apply to issue of whether arbitrator or court decides validity of arbitration agreement. 9 U.S.C. §§ 1-16; D.C. Code 1981, §§ 16-4301 to 16-4319. *Masurovsky v. Green*, 687 A.2d 198, 1996 D.C. App. LEXIS 294 (1996), amended by 1997 D.C. App. LEXIS 54 (D.C. Mar. 4, 1997).

Presumption favoring arbitration attaches only after court has determined that valid agreement to arbitrate exists; put another way, scales tip in favor of arbitration when court construes arbitration clause, but only after it finds, as initial matter, that enforceable arbitration clause exists. 9 U.S.C. §§ 1-16; D.C. Code 1981, §§ 16-4301 to 16-4319. *Masurovsky v. Green*, 687 A.2d 198, 1996 D.C. App. LEXIS 294 (1996), amended by 1997 D.C. App. LEXIS 54 (D.C. Mar. 4, 1997).

### Review.

The standard of review of arbitrability is *de novo*. *Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C.*, 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

Denial of motion to amend and stay execution of judgment on arbitration award is not appealable. Civil Arbitration Rule 7. *Howard & Hoffman v. Hartford Accident & Indem. Co.*, 634 A.2d 1214, 1993 D.C. App. LEXIS 308 (1993).

Scope of judicial intervention in arbitration proceedings is narrow, and court may interfere with outcome of arbitration only to extent permitted by arbitration statutes. *Pisciotta v. Shearson Lehman Bros.*, 629 A.2d 520, 1993 D.C. App. LEXIS 191 (1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 690, 126 L. Ed. 2d 657, 1994 U.S. LEXIS 108, 62 U.S.L.W. 3451 (1994).

### Weight and sufficiency of evidence.

Provision in amended certificate of limited warranty related to purchase of condominium that, if unit owner and builder's representative

fail to agree upon structural defects in components constituting unit or "relating to the plumbing and sewer ventilation lines located both within and outside the designated boundaries of the unit," or fail to agree upon corrections to such defects, dispute will be submitted to designated engineering entity for resolution, and that builder would repair or replace defects covered by the warranty and be liable for certain direct and consequential damages did not compel arbitration of owners' claim to rescind purchase agreement based on builders' alleged fraudulent inducement. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Provision in amended certificate of limited warranty related to purchase of condominium that, if unit owner and builder's representative fail to agree upon structural defects in components constituting unit or "relating to the plumbing and sewer ventilation lines located both within and outside the designated boundaries of the unit," or fail to agree upon corrections to such defects, dispute will be submitted to designated entity for resolution, and that builder would "correct any water-related damage to or associated with unit," evidenced into to submit to arbitration owners' claims relating to alleged negligent construction and installation of water and sewage systems. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Provision in certificate of limited warranty accompanying purchase of condominium that, if unit owner and builder's representative fail to agree upon structural defects in components of unit or upon corrections to such defects, dispute will be submitted to project architect for decision, did not compel arbitration of owners' claims against builders for negligence, breach of statutory duties, and other claims with respect to allegedly negligent construction of building and installation of water and sewage systems; "structural defect" was defined under certificate as defects in components constituting unit, while "unit" was defined as "space, interior partitions, and other fixtures and improvements within its boundaries," and did not include building's water and sewage systems serving entire building. *2200 M St. LLC v. Mackell*, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Provision in purchase agreement related to purchase of condominiums guaranteeing that condominiums would be delivered to purchaser "substantial in accordance with Plats and Plans" and requiring that all disputes "involving delivery of Unit in accordance with the Plans" be submitted to project architect for resolution did not compel arbitration of unit owners' claims for defective construction of condominiums, fraud, and related claims; "Plats and Plans," as defined by Condominium Act,

referred to location and dimensions of vertical boundaries of unit within building, which disputes were within professional expertise of architect, and did not include construction plans for installation of utilities, which were allegedly negligently installed. 2200 M St. LLC v. Mackell, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

Arbitration clause contained in attorney's written engagement agreement was sufficient to negate claim by client of fraudulent inducement, even though agreement did not expressly refer to relinquishment of jury trial right,

where agreement stated that any dispute concerning payment of fees would be resolved through arbitration rather than court action, client was reasonably informed that arbitration clause applied to malpractice claims for independent damages, and agreement was sent to client's home for review when she was still represented by another attorney. Haynes v. Kuder, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

## § 16-4407. Motion to compel or stay arbitration.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a party makes a motion to the court to order arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(f) If the court orders arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 7 of the Uniform Arbitration Act (2000).

### CASE NOTES

#### ANALYSIS

Construction with federal law.  
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In general.

Jurisdiction.  
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Stay of proceedings.  
Waiver.

### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

### Estoppel.

Prior court order staying arbitration of subcontractors' indemnification dispute did not collaterally estop subcontractor from subsequently bringing lawsuit for indemnification, though defendant subcontractor had raised defense in prior litigation for stay of arbitration that parties' had no indemnification agreement; trial court could have stayed arbitration only on ground that parties lacked agreement to arbitrate, and merits of indemnification claim were distinct from question of whether such claim was arbitrable. D.C. Code 1981, § 16-4302(b, e). *A.S. Johnson Co. v. Atlantic Masonry Co.*, 693 A.2d 1117, 1997 D.C. App. LEXIS 103 (1997).

### Fraud.

Employee's assertions that she should be able to show that she was under duress to agree to binding arbitration was inadequate to satisfy her affirmative obligation under District of Columbia law to demonstrate duress by clear and convincing evidence in order to invalidate binding arbitration agreement. *Nelson v. Insignia/ESG, Inc.*, 215 F.Supp.2d 143, 2002 U.S. Dist. LEXIS 14829 (2002).

If party to contract containing broad arbitration clause claims fraud in the inducement both of clause itself and of entire contract, court is to consider only the former claim; if claim of fraud in inducement of arbitration clause proves meritless, then court is foreclosed from considering issue as to contract as a whole, but must leave issue to be decided by arbiters. D.C. Code 1981, § 16-4302. *Hercules & Co. v. Shama Restaurant Corp.*, 613 A.2d 916, 1992 D.C. App. LEXIS 224 (1992).

Resolution of disputed issues of fact concerning claim of fraudulent inducement of arbitration clause of contract should not be determined on affidavits; full trial should be had. D.C. Code 1981, § 16-4302(a); 9 U.S.C. § 4. *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Except when party opposing arbitration denies existence of agreement to arbitrate, Uniform Arbitration Act requires court to order arbitration when applicant shows existence of valid agreement to arbitrate that is resisted by

opposing party; claim of fraudulent inducement of arbitration clause of contract effectively "denies existence of the agreement to arbitrate," and must be resolved by the court. D.C. Code 1981, § 16-4302(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Attack on arbitration agreement which is based on alleged fraud in making of entire contract which contains agreement to arbitrate may be resolved by arbitrator, as opposed to claim of fraudulent inducement of arbitration clause which is resolved by the court. D.C. Code 1981, § 16-4302(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Proceeding "summarily," for purposes of resolving claim of fraudulent inducement of arbitration clause of contract, means that trial court initially determines whether material issues of fact are disputed and, if such factual disputes exist, then conducts an expedited evidentiary hearing to resolve dispute. D.C. Code 1981, § 16-4302(a); 9 U.S.C. § 4. *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Partners in dissolved law partnership could have raised issue of fraud in inducement of partners to enter into settlement agreement providing for arbitration of distribution of contingent fees received by partnership in court before arbitration began or after issuance of unfavorable award. D.C. Code 1981, §§ 16-4302, 16-4311. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

Claims of fraudulent inducement of agreement containing arbitration clause can be determined under District of Columbia Uniform Arbitration Act. D.C. Code 1981, § 16-4302. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

### In general.

Failing to read or understand an arbitration agreement, or an employer's failure to explain it, does not constitute "special circumstances" warranting relieving an employee from compliance with the terms of an arbitration agreement that she signed. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Successor to affiliate and/or subsidiary of corporation whose insignia appeared on employment forms, including "Mutual Agreement to Arbitrate Claims" and "Dispute Resolution

Guide," could compel arbitration of employee's claims of discrimination and retaliation under District of Columbia Human Rights Act (DCHRA); arbitration agreement provided that any reference therein to parent corporation would also be reference to all subsidiaries and affiliated corporations and any successors and assigns, and while dispute resolution guide was distributed to employee without disclaimer that first three steps leading up to arbitration no longer applied, parties expressly agreed to be bound only by arbitration provision. *Sapiro v. VeriSign*, 310 F.Supp.2d 208, 2004 U.S. Dist. LEXIS 4940 (2004).

Whether an issue is arbitrable is a question of law, and a court must make its own determination on the issue. *Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C.*, 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

Provision in religious organization's bylaws that stated that disputes between members and the congregation were to be submitted to a Beth Din of Orthodox Jewish rabbis for a binding decision according to Jewish law constituted an arbitration agreement within the meaning of the Uniform Arbitration Act, even though the provision did not specifically use the term "arbitration" or identify a specific person or entity as the arbitrator. *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

If one party to an agreement which provides for arbitration refuses to arbitrate, the other party may move for an order compelling arbitration. D.C. Code 1981, § 16-4302(a). *National Trade Prods. v. Information Dev. Corp.*, 728 A.2d 106, 1999 D.C. App. LEXIS 101 (1999).

Motion to compel arbitration invokes well-established preference for arbitration when parties have expressed willingness to arbitrate. *Friend v. Friend*, 609 A.2d 1137, 1992 D.C. App. LEXIS 174 (1992).

When deciding whether to order arbitration, the trial court must determine as a matter of law whether the parties agreed to arbitrate the particular dispute at issue. *American Federation of Government Employees, Local 3721 v. District of Columbia*, 563 A.2d 361, 1989 D.C. App. LEXIS 173 (1989).

Upon receipt of a demand for arbitration evidencing claimant's understanding that contract in dispute named respondent, not as an agent of named corporate entities, but as a party principal, respondent had three options under the construction industry arbitration rules of the American Arbitration Association and could have either applied to the trial court for a stay of arbitration and for a prearbitration construction of the contract, or acceded to the arbitration, while raising the objection that there was no agreement to arbitrate at the arbitration hearing, thereby preserving the is-

sue for court review, or framed the submission to the arbitrators to include the issue of the identity of the parties to the contract. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

### **Jurisdiction.**

Contractor preserved jurisdictional defense by filing motion to dismiss on jurisdictional grounds contemporaneously with its answer. D.C. Code 1981, § 16-4302(a). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

### **Motions.**

Motion to dismiss that in fact sought to compel arbitration according to terms of separation agreement would be treated as motion to compel arbitration. *Friend v. Friend*, 609 A.2d 1137, 1992 D.C. App. LEXIS 174 (1992).

When motion to compel arbitration is supported by affidavit identifying arbitrable dispute, affidavit will be enough to defeat opposing motion for summary judgment and to require arbitration. *Friend v. Friend*, 609 A.2d 1137, 1992 D.C. App. LEXIS 174 (1992).

### **Objection to arbitration.**

Order compelling arbitration between former shareholder of cooperative against developer who had acquired cooperative, with respect to shareholder's claim against developer for breach of parties' settlement agreement, was justified; claim that developer breached agreement involved interpretation of agreement, which was a matter, in the first instance, for arbitrator, agreement required arbitration, but shareholder, by her actions, had refused to arbitrate her claim regarding developer's alleged breach of agreement, and shareholder's claim that developer waived right to arbitrate was initial question for arbitrator. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

Provision of commercial lease, expressly addressing controversies regarding determination of fair market value for purposes of lease's periodic adjustment of rent based on changes in fair market value, and stating that such controversies would be submitted to a panel of appraisers whose decision would be final and binding, trumped general arbitration provision of lease, and thus, a controversy regarding whether the appraisal was properly performed was not subject to arbitration. *Washington Automotive Co. v.*, 906 A.2d 869 (1828).

Provision of the Federal Arbitration Act (FAA) requiring enforcement of arbitration agreements did not preclude the District of Columbia from refusing to arbitrate disputes arising out of government contracts; the Procurement Practices Act (PPA) precludes government contracting officers from even entering



into arbitration agreements, and the decision of the District's legislature to centralize dispute resolution regarding government contracts in an administrative forum was therefore untouched by the FAA's general command that private arbitration agreements be enforced. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Party who participates in arbitration over its objection is not barred from raising that objection after the award. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Corporate officers sufficiently raised objection to arbitration proceedings against them, on grounds that agreement containing arbitration clause was with corporation, rather than with officers, to preserve their right, following entry of arbitral award, to contest finding that they were parties to the agreement; brief filed with arbitrator by corporate officer vigorously and repeatedly asserted that officers were not parties to arbitration agreement, and fact that the memorandum also attempted to argue the merits of other party's alter-ego theory did not vitiate the objection raised. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

### Presumptions.

There is strong legal presumption favoring arbitrability of labor disputes. *Washington-Baltimore Newspaper Guild, etc. v. Washington Post Co.*, 442 F. Supp. 1060, 1977 U.S. Dist. LEXIS 12929 (1977).

Where a party challenges the arbitrability of a dispute, the presumption is that the court must first settle the basic contractual question, unless the parties clearly and unmistakably provide otherwise; the very authority of the arbitrator to decide is at issue. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Preference for arbitration is essentially generalized inference of parties' intent; courts will presume that arbitration clause agreed upon by parties was intended to foreclose judicial involvement in their disputes. *Friend v. Friend*, 609 A.2d 1137, 1992 D.C. App. LEXIS 174 (1992).

### Review.

While an order which effectively denies arbitration is appealable, an order dismissing a case in favor of arbitration, which is interpreted as a motion to compel arbitration, is not appealable. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

Congregation members preserved for appeal their argument that organization was an alter ego of religious organization for purposes of

compelling arbitration of dispute under religious organization's bylaws, even though the members did not use the term "alter ego" in their pleadings in the trial court, where they alleged facts concerning the formation of the organization, its allegedly inappropriate purpose, its alleged control by prominent members of religious organization, and the manner in which it was alleged to have been used to circumvent the will of the overall membership of the congregation. *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

Denial of motion to dismiss action for breach of contract on grounds action was barred by contract's arbitration clause was denial of motion to compel arbitration that was immediately appealable. D.C. Code 1981, § 16-4302(a). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

Denial of motion to dismiss complaint, or any count thereof, alleging breach of contract, on ground that contract requires arbitration, is immediately appealable under statute making denial of motion to compel arbitration final for purposes of appeal. D.C. Code 1981, §§ 16-4302(a), 16-4317, 16-4317(a)(1). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

Order compelling arbitration, which is not included in list of orders deemed final under the Uniform Arbitration Act and which does not dispose of entire case on merits, is interlocutory and hence unappealable under the Act. D.C. Code 1973, § 11-721(a)(1); D.C. Code 1978 Supp., Tit. 16 App. § 18. *American Federation of Government Employees v. Koczak*, 439 A.2d 478, 1981 D.C. App. LEXIS 409 (1981).

### Statute of limitations.

Six-month statute of limitations borrowed from the National Labor Relations Act (NLRA), rather than three-year statute of limitations governing contracts in the District of Columbia, applied to action brought by union under section of the Labor Management Relations Act (LMRA) seeking to compel employer to engage in arbitration concerning grievance filed on behalf of employee. *National Labor Relations Act*, § 10(b), as amended, 29 U.S.C. § 160(b); D.C. Code 1981, § 12-301(7); *Labor Management Relations Act*, 1947, § 301, 29 U.S.C. § 185. *Communications Workers v. American Tel. & Tel. Co.*, 10 F.3d 887, 1993 U.S. App. LEXIS 32736 (C.A.D.C. 1993).

### Stay of proceedings.

Where plaintiff's suit was required to be arbitrated pursuant to arbitration clause of parties' contract, court would stay judicial proceedings pending arbitration, rather than dismiss suit. 9 U.S.C. § 3; D.C. Code 1981, § 16-

4302. *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319, 1989 U.S. Dist. LEXIS 14533 (1989).

The Court of Appeals had power under the All Writs Act to issue preliminary injunction against arbitration of dispute over government contract; appellate jurisdiction was implicated in the ultimate resolution of the issues of arbitrability and the jurisdiction of the Contract Appeals Board (CAB) to decide, in the first instance, the arbitrability of contract disputes under the District of Columbia Procurement Practices Act (PPA). *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

A preliminary injunction against arbitration of dispute arising out of government contract was supported by irreparable harm to the District of Columbia in the form of the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Balance of harms favored preliminary injunction against arbitration of dispute arising out of government contract; the only harm to the contractor was delay in the event the arbitration clause was enforceable, and the harm to the District of Columbia was the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Public interest weighed in favor of preliminary injunction against arbitration of dispute arising out of government contract; if the dispute were arbitrated in another state, there was no assurance that the questions of jurisdiction and arbitrability would be presented to the Court of Appeals for ultimate resolution, and the questions arose primarily under District of Columbia law. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

District court was required to stay litigation with respect to breach of contract count on motion to compel arbitration if dispute was subject to arbitration. D.C. Code 1981, § 16-4302(d). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

In dispute between joint venturers over joint venture agreement to purchase apartment and parking space, trial court properly stayed proceedings when parties agreed to arbitrate. D.C.

Code 1981, § 16-4302. *Poire v. Kaplan*, 491 A.2d 529, 1985 D.C. App. LEXIS 384 (1985).

#### Waiver.

Express requirement in employment agreement that any change to or waiver of the agreement be in a writing signed by employee, as "the party against whom enforcement of any such waiver or changes is sought," precluded employer from unilaterally altering agreement to waive provision in arbitration clause precluding award of punitive damages in arbitration. *Booker v. Robert Half Int'l, Inc.*, 315 F.Supp.2d 94, 2004 U.S. Dist. LEXIS 7242 (2004), affirmed by 413 F.3d 77, 367 U.S. App. D.C. 77, 2005 U.S. App. LEXIS 13124, 86 Empl. Prac. Dec. (CCH) P42000, 95 Fair Empl. Prac. Cas. (BNA) 1841, 151 Lab. Cas. (CCH) P60027 (2005).

Question of waiver of right to arbitration due to participation in litigation was to be decided by arbitrator; the broad agreement to arbitrate any dispute arising under or related to law firm's partnership agreement dictated that arbitrator should decide waiver question incidental to dispute about partner's ownership of limited partnership shares assigned back to limited partnership. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Any active participation in litigation prior to the assignment from which right to arbitration arose could not constitute evidence of waiver. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Mere participation in a lawsuit is probably not enough to support a finding of waiver of the right to arbitration; active participation or other action inconsistent with the right to arbitration is required before a finding of waiver can be made. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Any ambiguity as to the scope of the waiver must be resolved against waiver and in favor of arbitration. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

The test for determining whether there has been a waiver of the right to arbitration is whether, under the totality of the circumstances, the defaulting party has acted inconsistently with the arbitration right. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

The right to compel arbitration can be waived like any other contractual right. *Woodland L.P. v. Wulff*, 868 A.2d 860, 2005 D.C. App. LEXIS 34 (2005).

Test for determining whether there has been waiver of right to arbitration is whether, under totality of the circumstances, defaulting party has acted inconsistently with arbitration right; if there is any ambiguity as to scope of waiver, Court of Appeals must resolve ambiguity in



favor of arbitration. D.C. Code 1981, §§ 16-4301, 16-4302(a, d). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

Because arbitration is highly favored, court should be cautious in concluding that party to agreement which includes arbitration clause has waived his or her right to arbitration. D.C. Code 1981, §§ 16-4301, 16-4302(a, d). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

General contractor did not waive right to seek arbitration in carpeting subcontractor's breach of contract action by filing interrogatories and motion for summary judgment as to nonarbitrable claims. D.C. Code 1981, §§ 16-4301, 16-4302(a, d). *Hercules & Co. v. Beltway*

*Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).

Act of respondent when, instead of raising an objection, either by way of application to stay arbitration or by specific objection before arbitrators, he participated in arbitration held in accordance with the construction industry arbitration rules of the American Arbitration Association amounted to an effective consent to scope of claimant's arbitral submission and, as such, constituted a waiver of any defense to confirmation of award against him individually as void on basis of a lack of an agreement to arbitrate. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

## § 16-4408. Provisional remedies.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 8 of the Uniform Arbitration Act (2000).

## § 16-4409. Initiation of arbitration.

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under § 16-4415(c) not later than the beginning of the arbitration hearing, the person, by

appearing at the hearing, waives any objection to lack of or insufficiency of notice.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 9 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4410. Consolidation of separate arbitration proceedings.

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation; provided, that nothing in this section is intended to prevent a party's participation in a class action lawsuit or arbitration.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 10 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4411. Appointment of arbitrator; service as a neutral arbitrator.

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an



arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 11 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4412. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under § 16-4423(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court, under § 16-4423(a)(2), may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under § 16-4423(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under § 16-4423(a)(2).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 12 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

### § 16-4413. Action by majority.

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under § 16-4415(c).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 13 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

### § 16-4414. Immunity of arbitrator; competency to testify; attorney's fees and costs.

(a) An arbitrator is immune from civil liability to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by § 16-4412 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under § 16-4423(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or if a person seeks to compel an arbitrator to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator is immune from civil liability or that the arbitrator is not competent to testify, the court shall award to the arbitrator reasonable attorney's fees and other reasonable expenses of litigation.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 14 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

### § 16-4415. Arbitration process.

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the



proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c)(1) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection.

(2) Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time, as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date.

(3) The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear.

(4) The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with § 16-4411 to continue the proceeding and to resolve the controversy.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 15 of the Uniform Arbitration Act (2000).

## CASE NOTES

### ANALYSIS

Construction with federal law.  
In general.

### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. Bolton

v. Bernabei & Katz, PLLC, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

### In general.

Failure of party seeking confirmation of arbitration award to rebut claim of fraud in inducement of settlement agreement pursuant to which the arbitration occurred—or to request hearing on issue—did not require judge to accept allegations of fraud; party opposing confirmation obliquely advanced fraud as reason

for denying confirmation, there was uncertainty whether judge even ruled on basis of allegations, and judge had no basis on which to resolve issues of state of mind crucial to claim of fraudulent inducement due to fact that there were no affidavits of parties. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

Even if homeowner's counsel's motion to vacate arbitration authority's notice of hearing presented request that hearing be delayed, motion did not present arbitration authority with "good cause" that warranted extension of time which would justify vacation of arbitration award in favor of contractor. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Asso.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

Fact that arbitration hearing was held ex parte pursuant to arbitration authority's rules did not require vacation of award in favor of contractor where hearing was held ex parte only because homeowner and her counsel declined to be present. *Capozio v. American Arbitration Asso.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

Arbitration Act by its terms permits court intervention into arbitration process only to extent that arbitration authority presented with good cause refuses to extend time for hearing. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Asso.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

Homeowner's counsel's motion to vacate arbitration authority's notice of hearing did not properly convey request for extension of time for hearing where motion did not mention hearing date set by arbitrator or reason that date selected would be inconvenient for counsel, but rather, motion merely addressed arbitration authority's three previous denials of extension of time to select arbitrators and dates and, therefore, arbitration authority did not abuse its discretion in refusing to act on request which would warrant vacation of arbitration award. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Asso.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

## § 16-4416. Representation by lawyer.

A party to an arbitration proceeding may be represented by a lawyer.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 16 of the Uniform Arbitration Act (2000).

## § 16-4417. Witnesses; subpoenas; depositions; discovery.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) To make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may:



(1) Order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders;

(2) Issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding; and

(3) Take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in the District of Columbia.

(g)(1) The court may enforce a subpoena or discovery-related order for the attendance of a witness within the District of Columbia and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective.

(2) A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in the District of Columbia and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in the District of Columbia.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 17 of the Uniform Arbitration Act (2000).

## § 16-4418. Judicial enforcement of preaward ruling by arbitrator.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under § 16-4419. A prevailing party may make a motion to the court for an expedited order to confirm the award under § 16-4422, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under § 16-4423 or 16-4424.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 18 of the Uniform Arbitration Act (2000).

§ 16-4419. Award.

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice, as provided for in § 16-4409, of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 19 of the Uniform Arbitration Act (2000).

CASE NOTES

ANALYSIS

Ambiguous and indefinite.  
Construction with federal law.  
In general.

**Ambiguous and indefinite.**

Arbitration award was ambiguous, requiring remand for clarification, when it called for postal service to observe local memorandum of understanding (MOU), when order could plausibly be interpreted to mean that service show observance by taking specified employment actions, or that MOU was to be applied in its entirety to service's new facility. *Am. Postal Workers Union v. United States Postal Serv.*, 254 F.Supp.2d 12, 2003 U.S. Dist. LEXIS 4472 (2003).

Doctrine of "functus officio," providing that once arbitrator has made and published final award his authority is exhausted and he can do nothing more in regard to subject matter of arbitration, did not preclude remand of arbitration award for clarification of its terms. *Am. Postal Workers Union v. United States Postal Serv.*, 254 F.Supp.2d 12, 2003 U.S. Dist. LEXIS 4472 (2003).

Arbitration award made pursuant to arbitration called for under collective bargaining agreement is "ambiguous" if it is susceptible to more than one interpretation or fails to address contingency that later arises. *Am. Postal Workers Union v. United States Postal Serv.*, 254 F.Supp.2d 12, 2003 U.S. Dist. LEXIS 4472 (2003).

Court may not enforce arbitration award, made pursuant to arbitration called for under collective bargaining agreement, when award is ambiguous or indefinite. *Am. Postal Workers Union v. United States Postal Serv.*, 254 F.Supp.2d 12, 2003 U.S. Dist. LEXIS 4472 (2003).

**Construction with federal law.**

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

**In general.**

Where recovery of private damages is the purpose of civil rights litigation, an arbitration panel, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought. *Shore v. Groom Law Group*, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Arbitration award is deemed final as long as it shows an intention to resolve the issues submitted, even if the arbitration panel retains jurisdiction to deal with any lingering matters. *Shore v. Groom Law Group*, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Arbitrators are not required to state the grounds for their decisions. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

Arbitrator's alleged failure to rule on former employee's counterclaim against law firm for



wrongful termination did not establish evident partiality required to vacate arbitral award in firm's favor, despite former employee's contention that failure stemmed from arbitrator's reluctance to touch on alleged conflict of interest by firm member with whom arbitrator had professional relationship; award purported to decide matter in its entirety and former employee failed to bring alleged oversight before arbitrators or trial court to compel decision on matter. D.C. Code 1981, §§ 16-4308(a), 16-4311(a)(2). *Umana v. Swidler & Berlin, Chtd.*, 745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000),

writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

Although arbitral award must be in writing, arbitrators' failure to explicate the award is not a basis to show partiality, as arbitrators are not required to set out the reasons for award. D.C. Code 1981, § 16-4308(a). *Umana v. Swidler & Berlin, Chtd.*, 745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000), writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

## § 16-4420. Change of award by arbitrator.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under § 16-4422, 16-4423, or 16-4424, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to §§ 16-4419(a), 16-4422, 16-4423, and 16-4424.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 20 of the Uniform Arbitration Act (2000).

### CASE NOTES

#### ANALYSIS

Construction with federal law.  
In general.

#### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. Bolton

*v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

#### In general.

Remand for reinstatement of arbitration award in connection with contract dispute between parties also required additional fact finding on question of discrepancy between face amount of award and total value of items listed in schedule prepared by arbitrators in accor-

dance with the construction industry arbitration rules of the American Arbitration Association and for a determination of the interest owing, if any, on the award. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

Usual procedure for seeking reconsideration of an arbitration award is to note an appeal and then request that the appeal be held in abeyance until the motion to reconsider is decided. *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

## § 16-4421. Remedies; fees and expenses of arbitration proceeding.

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under § 16-4422 or for vacating an award under § 16-4423.

(d) An arbitrator's reasonable expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 21 of the Uniform Arbitration Act (2000).

## § 16-4422. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to § 16-4420 or 16-4424 or is vacated pursuant to § 16-4423.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 22 of the Uniform Arbitration Act (2000).



**§ 16-4423. Vacating award.**

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-4409 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) The court may vacate an award made in the arbitration proceeding on other reasonable ground.

(c) A motion under this section shall be filed within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(d) If the court vacates an award on a ground other than that set forth in subsection (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in § 16-4419(b) for an award.

(e) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 23 of the Uniform Arbitration Act (2000).

## CASE NOTES

## ANALYSIS

Attorney fees.  
 Authority of arbitrator.  
 Consent or waiver.  
 Construction with federal law.  
 Continuance or postponement of arbitration.  
 Election of remedies.  
 Evidence.  
 Fraud.  
 In general.  
 Judgment.  
 Jurisdiction.  
 Motions and petitions.  
 Orders.  
 Partiality of arbitrator.  
 Pleadings.  
 Preemption.  
 Public policy exception.  
 Questions of law or fact.  
 Remedies.  
 Review.  
 Statute of limitations.  
 Undue means.

**Attorney fees.**

Even if District of Columbia Arbitration Act (DCAA) applied to tenant's request for attorney fees incurred in its motion to confirm arbitration award regarding decennial increase in annual rent due landlord under 99-year ground lease, tenant was not entitled to attorney fees on the ground that landlord did not satisfy any of the bases for vacating the award under the DCAA, as landlord was not disputing amount of the rent increase but instead was disputing the scope of the award and whether the award included rationale that landlord could not seek an increase in rent based on an increase in land value. *Cathedral Ave. Coop., Inc. v. Carter*, 947 A.2d 1143, 2008 D.C. App. LEXIS 240 (2008).

**Authority of arbitrator.**

If an arbitrator rules only on matters within the scope of the governing arbitration clauses, he or she will not exceed his authority under the District of Columbia Uniform Arbitration Act. *Fairman v. District of Columbia*, 934 A.2d 438, 2007 D.C. App. LEXIS 640 (2007).

Owner of office building was not entitled to have arbitration award set aside based on allegation that arbitrator made incorrect factual determinations in the absence of evidence that the arbitrator manifestly disregarded the law or that his decision was arbitrary and capricious. *Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C.*, 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

Party may not submit a claim to arbitration and then challenge the authority of the arbitration panel to act after receiving an unfavorable

result. *Shore v. Groom Law Group*, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

If an arbitrator rules only on matters within the scope of the governing arbitration clauses, he will not exceed his authority. D.C. Code 1981, § 16-4311(a). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Servs.*, 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

Arbitrator did not exceed his authority under arbitration clauses in brokerage agreement, in dispute between commercial building owner and real estate agent, by awarding agent immediate payment of commission for the signing of a lessor to future occupancy of the building; general arbitration clause that the parties were to arbitrate all disputes prevailed over specific arbitration clause that the parties were to arbitrate only disputes where cause existed to terminate the agreement. D.C. Code 1981, § 16-4311(a)(3). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Servs.*, 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

Determination that arbitrator did not exceed his authority under arbitration clause in brokerage agreement, in dispute between commercial building owner and real estate agent regarding when commission payment was due to agent for its signing of a lessor to future tenancy of the building, foreclosed judicial review of arbitrator's decisions as to when the payment was due, the interest rate applied to the commission award, and the method of calculation of the commission. D.C. Code 1981, § 16-4311(a)(3). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Servs.*, 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

Vague assertions that arbitrators had exceeded their powers and that trial court lacked personal and subject matter jurisdiction over respondent, set forth as defenses in response to claimant's petition to confirm arbitration award without any supporting memorandum of law to explain what was meant thereby, were insufficient to qualify as objections to award on personal liability grounds. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

**Consent or waiver.**

Parties did not waive their request for postponement of arbitration proceeding in dispute that arose from alleged breach of merger agreement, to wait for Small Business Administration (SBA) to complete its investigation into party's eligibility for minority preference program, when they failed to renew motion requesting postponement at appropriate time during hearings as expressly allowed by arbi-



trators, since arbitrators denied request to renew motion at arbitration hearing. *Naing Int'l Enters. v. Ellsworth Assocs.*, 961 F. Supp. 1, 1997 U.S. Dist. LEXIS 4480 (1997).

Plaintiff waived for appellate review issue of allegedly unfair private conversations between arbitrator and defendant during arbitration proceedings where plaintiff did not object to conversations during arbitration. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

Party who participates in arbitration over its objection is not barred from raising that objection after the award. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Corporate officers sufficiently raised objection to arbitration proceedings against them, on grounds that agreement containing arbitration clause was with corporation, rather than with officers, to preserve their right, following entry of arbitral award, to contest finding that they were parties to the agreement; brief filed with arbitrator by corporate officer vigorously and repeatedly asserted that officers were not parties to arbitration agreement, and fact that the memorandum also attempted to argue the merits of other party's alter-ego theory did not vitiate the objection raised. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

On motion to confirm arbitral award, trial court had authority to determine whether dispute was arbitrable, despite movant's contention that, by participating in arbitration proceeding, nonmovant irrevocably submitted to authority of arbitrator and that arbitrator had exclusive authority to decide who was party to agreement containing that arbitration clause; Uniform Arbitration Act (UAA) specifically contemplated determination by court whether arbitration agreement requires person to submit to arbitration. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Renovation company which did not challenge arbitration award within 90 days of entry did not waive its right to challenge award where challenge involved issue of fraudulent inducement to enter into arbitration agreement, which had been raised in preaward proceedings that were not governed by 90-day time limit, raising challenge again at any earlier point would have been futile after claim had been dismissed by trial court with prejudice, and appellate court had expressly reserved merits of issue until appeal from final arbitration award had been taken. D.C. Code 1981, §§ 16-4302, 16-4311, 16-4312. *Hercules & Co. v.*

*Shama Restaurant Corp.*, 613 A.2d 916, 1992 D.C. App. LEXIS 224 (1992).

Act of respondent when, instead of raising an objection, either by way of application to stay arbitration or by specific objection before arbitrators, he participated in arbitration held in accordance with the construction industry arbitration rules of the American Arbitration Association amounted to an effective consent to scope of claimant's arbitral submission and, as such, constituted a waiver of any defense to confirmation of award against him individually as void on basis of a lack of an agreement to arbitrate. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

### Continuance or postponement of arbitration.

Arbitrary denial of reasonable request for postponement may serve as grounds for vacating arbitration award. 9 U.S.C. § 10(a)(3). *Naing Int'l Enters. v. Ellsworth Assocs.*, 961 F. Supp. 1, 1997 U.S. Dist. LEXIS 4480 (1997).

Arbitrators are to be accorded degree of discretion in exercising their judgment with respect to requested postponement, and thus, if there exists reasonable basis for arbitrators' decision not to grant continuance, Court of Appeals will be reluctant to interfere with award on these grounds; however, if failure of arbitrator to grant postponement or adjournment results in foreclosure of presentation of pertinent and material evidence, it is abuse of discretion. 9 U.S.C. § 10(a)(3). *Naing Int'l Enters. v. Ellsworth Assocs.*, 961 F. Supp. 1, 1997 U.S. Dist. LEXIS 4480 (1997).

Request for continuance in arbitration proceeding in dispute that arose from alleged breach of merger agreement, to wait for Small Business Administration (SBA) to complete its investigation into party's eligibility for minority preference program was reasonable, and thus arbitration panel's denial of request was abuse of discretion; SBA determination was material to merger, panel knew that determination was pending, and party failed to disclose that it was negotiating voluntary withdrawal from program with SBA. 9 U.S.C. § 10(a)(3). *Naing Int'l Enters. v. Ellsworth Assocs.*, 961 F. Supp. 1, 1997 U.S. Dist. LEXIS 4480 (1997).

Homeowner's counsel's motion to vacate arbitration authority's notice of hearing did not

properly convey request for extension of time for hearing where motion did not mention hearing date set by arbitrator or reason that date selected would be inconvenient for counsel, but rather, motion merely addressed arbitration authority's three previous denials of extension of time to select arbitrators and dates and, therefore, arbitration authority did not abuse its discretion in refusing to act on request which would warrant vacation of arbitration award. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Assn.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

Even if homeowner's counsel's motion to vacate arbitration authority's notice of hearing presented request that hearing be delayed, motion did not present arbitration authority with "good cause" that warranted extension of time which would justify vacation of arbitration award in favor of contractor. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Assn.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

Even if Arbitration Act did cover party's requests for additional time before he was required to take steps necessary to start arbitration process itself, homeowner failed to present sufficient good cause to arbitrator for requested extension of more than ten times the amount of time provided in arbitration rules for selection of arbitrators and hearing dates. D.C. Code 1981, § 16-4311(a)(4). *Capozio v. American Arbitration Assn.*, 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

### **Election of remedies.**

Motorist against whom arbitration award was entered had a trial on the merits before an arbitrator, and thus, he could not seek relief from judgment to reopen the matter in favor of trial on the merits. Civil Rule 60(b); Civil Arbitration Rule X(b). *Siddiq v. Ostheimer*, 718 A.2d 145, 1998 D.C. App. LEXIS 183 (1998).

### **Evidence.**

For exclusion of evidence to provide basis for vacating arbitration award evidence must be material. D.C. Code 1981, § 16-4311(a)(4). *Wayne Insulation Co. v. Hex Corp.*, 534 A.2d 1279, 1987 D.C. App. LEXIS 529 (1987).

Corporation's offer of payment to insulation company provided that insulation company discounted its claim against homeowner and dismissed a pending lawsuit was not an admission of liability distinct from rest negotiation process and instead was merely conditional offer in course of settlement negotiations, and thus exclusion of evidence as to offered payment was not material and did not warrant vacation of arbitration award entered against insulation company in favor of corporation. D.C. Code 1981, § 16-4311(a)(4). *Wayne Insulation Co. v.*

*Hex Corp.*, 534 A.2d 1279, 1987 D.C. App. LEXIS 529 (1987).

### **Fraud.**

Attack on arbitration agreement which is based on alleged fraud in making of entire contract which contains agreement to arbitrate may be resolved by arbitrator, as opposed to claim of fraudulent inducement of arbitration clause which is resolved by the court. D.C. Code 1981, § 16-4302(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Except when party opposing arbitration denies existence of agreement to arbitrate, Uniform Arbitration Act requires court to order arbitration when applicant shows existence of valid agreement to arbitrate that is resisted by opposing party; claim of fraudulent inducement of arbitration clause of contract effectively "denies existence of the agreement to arbitrate," and must be resolved by the court. D.C. Code 1981, § 16-4302(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Partners in dissolved law partnership could have raised issue of fraud in inducement of partners to enter into settlement agreement providing for arbitration of distribution of contingent fees received by partnership in court before arbitration began or after issuance of unfavorable award. D.C. Code 1981, §§ 16-4302, 16-4311. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

Claims of fraudulent inducement of contract may be asserted in properly filed application to vacate arbitration award entered pursuant to the contract. D.C. Code 1981, §§ 16-4302, 16-4311. *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

Partners in dissolved law partnership could oppose confirmation of arbitrator's award of distribution of contingent fees pursuant to settlement agreement on ground that agreement as whole stemmed from other partners' asserted fraudulent inducement. D.C. Code 1981, § 16-4311(a)(3, 5). *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

Partners' allegation that arbitrator had exceeded his authority by issuing arbitration award pursuant to settlement agreement that was void through fraud was proper ground under District of Columbia Uniform Arbitration Act to oppose confirmation of award. D.C. Code 1981, § 16-4311(a)(3, 5). *Thompson v. Lee*, 589 A.2d 406, 1991 D.C. App. LEXIS 83 (1991).

### **In general.**

The limited judicial review of an arbitration award serves to attain a balance between the



need for speedy, inexpensive dispute resolution, on the one hand, and the need to establish justified confidence in arbitration among the public, on the other. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Judicial review of an arbitrator's decision is extremely limited, and a party seeking to set it aside has a heavy burden. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Where a party has not sought to vacate an arbitrator's award on statutorily-recognized grounds pursuant to the District of Columbia Uniform Arbitration Act, courts cannot set aside such awards for errors of law or fact made by the arbitrator. *Fairman v. District of Columbia*, 934 A.2d 438, 2007 D.C. App. LEXIS 640 (2007).

Unless manifest disregard of the law is clear, courts will not look beyond the lump-sum award by the arbitrators in an attempt to analyze the reasoning process of the arbitrators. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

An arbitrator is not required to spell out his interpretation of an agreement in order to make a valid award. D.C. Code 1981, § 16-4311(a)(3). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Servs.*, 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

Trial court has no inherent authority to vacate a judgment based on arbitration award; such an ill-defined and generalized authority would be contrary to the deep-seated interest in promoting the finality of judgments, which is especially strong in arbitration context. *Siddiq v. Ostheimer*, 718 A.2d 145, 1998 D.C. App. LEXIS 183 (1998).

Although separation agreements and arbitration are similar to extent that both reduce court congestion and afford parties opportunity to settle their disputes without court intervention, with speed, economy and substantial finality, if arbitration is undertaken, rule of court in interpreting arbitration decision may be more limited than it would be were court interpreting separation agreement, and unlike separation agreement, there is statutory time within which party may seek modification or vacation of arbitration decision. D.C. Code 1981, §§ 16-4311, 16-4312. *Spencer v. Spencer*, 494 A.2d 1279, 1985 D.C. App. LEXIS 414 (1985).

Under the District of Columbia Uniform Arbitration Act, trial court must confirm an arbitration award if a motion to vacate that award is denied and a motion to modify or correct the award is not pending. D.C. Code 1981, § 16-4311(d). *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

Contractor, although not expressly named in a contract as an individual party to it, may

have been found a proper party to the arbitration and held individually liable if, as plaintiffs contended, contractor and contracting company were one and the same personality; if plaintiffs could have shown that the corporation was a mere facade then contractor would have not been protected by the corporate veil. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

### Judgment.

At the point where party has moved the trial court to consider vacating arbitration award and such relief is denied, consequence is the same as confirmation of a judgment, and no additional motion or further hearings are required for court to enter a judgment. D.C. Code 1981, § 16-4311(d). *Hogue v. Popham Haik Schnobrich & Kaufman Ltd.*, 753 A.2d 1014, 2000 D.C. App. LEXIS 132 (2000).

Given practical effect of trial court's denial of plaintiff's motion to vacate arbitration award and appellate court's affirmance of the same in a memorandum opinion and judgment, trial court's subsequent entry of judgment at status conference was essentially a purely administrative task, and thus, it was not error for trial court to enter judgment after denial of plaintiff's motion to vacate pursuant to statute providing that, if application to vacate is denied and no motion to modify or correct award is pending, court shall confirm award. D.C. Code 1981, § 16-4311(d). *Hogue v. Popham Haik Schnobrich & Kaufman Ltd.*, 753 A.2d 1014, 2000 D.C. App. LEXIS 132 (2000).

After motorist failed to timely file demand for trial de novo following issuance of arbitration award, trial court could not entertain motion for relief from judgment; any inherent power of trial court to grant relief from judgment was superseded by arbitration rule specifically addressing manner in which a party may contest a nonbinding arbitration award, and ruling out motion for relief from judgment. Civil Rule 60(b); Civil Arbitration Rule X(b). *Siddiq v. Ostheimer*, 718 A.2d 145, 1998 D.C. App. LEXIS 183 (1998).

### Jurisdiction.

For purposes of determining whether cause of action under District of Columbia Arbitration Act (DCAA) by executive council of union representing pilots of one airline involved in merger could provide basis for federal removal jurisdiction, right to relief did not depend on federal law; cause involved application to set aside arbitration award which allegedly violated pilots association merger policy by failing to draw its essence therefrom and exceeding Arbitration Board's powers thereunder, which requested vacatur of award in its entirety and "such other and further relief as the court deems necessary and proper." *US Airways Mas-*

ter Executive, Council, Air Line Pilots Assoc., Int'l. v. America West Master Executive, Council, Air Line Pilots Assoc., Int'l. US Airways Master Exec. v. Am. W. Master Exec. Council, 525 F.Supp.2d 127, 2007 U.S. Dist. LEXIS 87841 (2007).

Arbitration Act by its terms permits court intervention into arbitration process only to extent that arbitration authority presented with good cause refuses to extend time for hearing. D.C. Code 1981, § 16-4311(a)(4). Capozio v. American Arbitration Assn., 490 A.2d 611, 1985 D.C. App. LEXIS 367 (1985).

### Motions and petitions.

There need not be a motion by a party to confirm the judgment, if motion to vacate arbitration award has been submitted to trial court and denied. D.C. Code 1981, § 16-4311(d). Hogue v. Popham Haik Schnobrich & Kaufman Ltd., 753 A.2d 1014, 2000 D.C. App. LEXIS 132 (2000).

Party may present reasons for vacating award by filing petition with trial court to vacate award or by raising reasons supporting vacation in answer to other party's petition to confirm. Walter A. Brown, Inc. v. Moylan, 509 A.2d 98, 1986 D.C. App. LEXIS 328 (1986).

Although agreement to arbitrate action for an accounting, breach of contract and fraud brought by one joint venturer against the other was not in writing at time court ordered arbitration, submission agreement in effect thereafter was consistent with requirements of the Arbitration Act, and thus, where one joint venturer failed to comply with statute governing motions to vacate or modify an arbitration award, her attack on arbitration award was time barred. D.C. Code 1981, § 16-4311(b). Poiré v. Kaplan, 491 A.2d 529, 1985 D.C. App. LEXIS 384 (1985).

### Orders.

Even though trial court's order did not specifically state that it "confirmed" arbitration award, such order was a "final order" for purposes of appeal, in that order finally determined the rights and obligations of the parties. D.C. Code 1981, §§ 11-721(a)(1), 16-4311(d), 16-4317(a)(1, 3). Tung v. W.T. Cabe & Co., 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

### Partiality of arbitrator.

A showing of partiality by arbitrator, as basis for vacating an arbitration award, cannot be inferred from arbitrator's decision on the merits, but must be based on establishment of specific facts which indicate improper motives on part of arbitrator. Dolton v. Merrill Lynch, 935 A.2d 295, 2007 D.C. App. LEXIS 562 (2007).

Alleged ex parte communications between arbitration panel and law firm regarding payment of back pay award to former partner did

not require that arbitration award be vacated and that a new proceeding before a new panel be ordered; substance of alleged communications could have been determined even without reliance on undisclosed communications, and parties had agreed to disregard arbitration rule prohibiting ex parte contacts. Shore v. Groom Law Group, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Even assuming arbitration association staff could be considered "arbitrators" under Arbitration Act provision allowing an award to be vacated based on arbitrator's evident partiality, corruption, or misconduct, association case administrators' ex parte discussions with church about whether to hold pre-hearing conference did not require award for church to be vacated in dispute with architect, where association's rules allowed parties to directly communicate with case administrators. Sanders v. Maple Springs Baptist Church, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Assuming arbitration association staff could be considered "arbitrators" under Arbitration Act provision allowing an award to be vacated based on arbitrator's evident partiality, corruption, or misconduct, the staff's conduct in delaying the arbitration process during settlement discussions, which architect alleged had constituted a "special favor" to church, did not require award for church to be vacated, where association's rules allowed an extension of any period of time under the rules, for good cause. Sanders v. Maple Springs Baptist Church, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Even assuming arbitration association staff could be considered "arbitrators" under Arbitration Act provision allowing an award to be vacated based on arbitrator's evident partiality, corruption, or misconduct, the staff's failure to provide architect with additional biographical information requested by architect regarding potential arbitrators, before architect was required to submit his objections and rankings, did not require award for church to be vacated; there was no showing the arbitrator chosen by association was biased or otherwise unfit. Sanders v. Maple Springs Baptist Church, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Arbitrator's alleged failure to rule on former employee's counterclaim against law firm for wrongful termination did not establish evident partiality required to vacate arbitral award in firm's favor, despite former employee's contention that failure stemmed from arbitrator's reluctance to touch on alleged conflict of interest by firm member with whom arbitrator had professional relationship; award purported to decide matter in its entirety and former employee failed to bring alleged oversight before arbitrators or trial court to compel decision on matter. D.C. Code 1981, §§ 16-4308(a), 16-4311(a)(2). Umana v. Swidler & Berlin, Chtd.,



745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000), writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

Professional relationship which was created between arbitrator and firm representative during two-year period when both served within different bureaus of federal agency, approximately 20 years earlier, and which continued on sporadic basis thereafter, was not of kind that threatened bias justifying vacation of arbitral award; therefore, arbitrator's failure to disclose relationship did not establish evident partiality required to vacate arbitral award favoring firm. D.C. Code 1981, § 16-4311(a)(2). *Umana v. Swidler & Berlin, Chtd.*, 745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000), writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

Arbitrator's actions in conducting arbitration and making discovery rulings did not establish that he was biased in favor of one party, so as to support vacation of arbitral award. D.C. Code 1981, § 16-4311(a)(2). *Umana v. Swidler & Berlin, Chtd.*, 745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000), writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

Assuming that parties could by contract dictate scope of judicial review of arbitral award, arbitrator's failure to disclose his professional relationship with member of party-law firm, which did not establish evident partiality required to vacate arbitral award under statute, was insufficient to support vacatur on grounds that nondisclosure breached provision of arbitration agreement requiring arbitration to comply with specified arbitration rules, given lack of express indication in contract that parties intended not to be bound by award for reasons other than those provided by governing law. D.C. Code 1981, § 16-4311(a)(2). *Umana v. Swidler & Berlin, Chtd.*, 745 A.2d 334, 2000 D.C. App. LEXIS 36 (2000), writ of certiorari denied by 533 U.S. 952, 121 S. Ct. 2596, 150 L. Ed. 2d 754, 2001 U.S. LEXIS 5007, 69 U.S.L.W. 3807 (2001).

Generally, evident partiality of an arbitrator is confined to situations where the arbitrator has had dealings or relationships with one of the parties that might cause him to be biased, and, for this reason, courts have repeatedly rejected claims by parties dissatisfied with the results of arbitration proceedings that certain rulings can only be explained by the arbitrators' evident partiality. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

The mere fact that arbitrators are persuaded by one party's arguments and choose to agree with them is not of itself sufficient to raise a question as to the evident partiality of the

arbitrators. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

To permit "evident partiality" to be inferred from the arbitrator's decision on the merits would undercut the restrictions on judicial review of arbitration proceedings for error of fact and law. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

An inference of arbitrator bias from a decision on the merits could be drawn from an alleged departure from correct legal principles, if at all, only in extreme and unusual circumstances. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

The party alleging partiality of an arbitrator has the burden of proving specific facts which indicate improper motives on the part of the arbitrator. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

Arbitrator's award, in dispute between law firm and former partner over compensation due upon his departure, was not based on evident partiality due to arbitrator's past relationship with counsel for law firm, where the past relationship, which existed over 20 years earlier, was fully disclosed, the arbitrator had no financial stake in the outcome, and partner consented to the arbitrator. D.C. Code 1981, § 16-4311(a)(2). *Lopata v. Coyne*, 735 A.2d 931, 1999 D.C. App. LEXIS 172 (1999).

An involuntary, adversary relationship between an arbitrator and a party to arbitration, involving minimal contact that has terminated prior to arbitration, cannot be deemed one that might cause bias. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

Bias of an arbitrator requiring vacation of award must be due to some financial interest or other loyalty owed to one side of the dispute. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

There was no evident partiality arising from prior relationship between arbitrator and party's counsel, although arbitrator had on two previous occasions represented a client of the law firm that represented a party in the arbitration; only conceivable interest of arbitrator was in not alienating an attorney he might in the future oppose, a concern that would apply to virtually every lawyer who is an arbitrator. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

There was no evident partiality of arbitrator requiring vacation of award under either District of Columbia or New Jersey law, although arbitrator may have made his views plain to the participants in light of developing evidence, arbitrator correctly stated that he was not

required to follow the law, but evidence did not show he intended to disregard either the law or the evidence, and the arbitrator intended to facilitate, rather than short-circuit, arbitral process by making express what he believed to be deficiencies in plaintiff's case. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

A corporation challenging an arbitration award to its former sales representative failed to establish evident partiality on the part of the arbitrator; arbitrator had before him the parties' agreement and surrounding documentation, and heard evidence from both sides including conflicting testimony regarding commissions alleged to be due, and there was no indication that decision was predicated on errors so egregious that bias, corruption, infidelity to law or irrationality could be inferred. D.C. Code § 1981, § 16-4311(a)(2). *Celtech, Inc. v. Broumand*, 584 A.2d 1257, 1991 D.C. App. LEXIS 8 (1991).

### **Pleadings.**

Although answer to application to confirm arbitration award was not framed as counterclaim as such, "defenses" raised therein constituted request for affirmative relief of having arbitration award vacated. *Walter A. Brown, Inc. v. Moylan*, 509 A.2d 98, 1986 D.C. App. LEXIS 328 (1986).

### **Preemption.**

RLA did not completely preempt removed causes of action under District of Columbia Arbitration Act (DCAA) asserted by executive council of union representing pilots of one airline involved in merger, seeking to vacate arbitration award resolving dispute over integrated pilot seniority list. *US Airways Master Executive, Council, Air Line Pilots Assoc., Int'l. v. America West Master Executive, Council, Air Line Pilots Assoc., Int'l. US Airways Master Exec. v. Am. W. Master Exec. Council*, 525 F.Supp.2d 127, 2007 U.S. Dist. LEXIS 87841 (2007).

### **Public policy exception.**

Assuming public policy exception as a ground for vacating an arbitral award fell within "on other reasonable ground" language of new provision of the Uniform Arbitration Act permitting court to vacate an award made in the arbitration proceeding "on other reasonable ground," client failed to satisfy requirements for vacatur of arbitration award ordering client to pay law firm legal fees in fee dispute, as client spoke only in generalities and failed to identify a fundamental, well-defined policy that was implicit in statutes or municipal regulations, or in the Constitution that was violated by the arbitrator's award. *A1 Team United States Holdings, LLC v. Bingham McCutchen*

*LLP*, 998 A.2d 320, 2010 D.C. App. LEXIS 342 (2010).

### **Questions of law or fact.**

Trial court must decide as matter of law whether particular dispute is arbitrable. *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

### **Remedies.**

Investors could not collaterally attack arbitration award against brokerage, arising from investors' claims of mishandling funds, by bringing action for damages based on brokerage's alleged fraud during arbitration; statute provided exclusive remedy for fraud in arbitration even though investors did not wish to disturb arbitration award but sought only additional damages. D.C. Code 1981, § 16-4311(a)(1), (b, c). *Pisciotta v. Shearson Lehman Bros.*, 629 A.2d 520, 1993 D.C. App. LEXIS 191 (1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 690, 126 L. Ed. 2d 657, 1994 U.S. LEXIS 108, 62 U.S.L.W. 3451 (1994).

Investors were confined to remedy provided in arbitration statute for claim of alleged fraud by brokerage in arbitration proceeding, where investors made no showing that specified remedy would be inadequate, and investors knew or should have known they would be bound by procedures set forth in arbitration statutes. D.C. Code 1981, § 16-4311(a)(1), (b, c). *Pisciotta v. Shearson Lehman Bros.*, 629 A.2d 520, 1993 D.C. App. LEXIS 191 (1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 690, 126 L. Ed. 2d 657, 1994 U.S. LEXIS 108, 62 U.S.L.W. 3451 (1994).

### **Review.**

Question of arbitrability of issues relating to carve-out properly was before arbitration panel for resolution under District of Columbia Revised Uniform Arbitration Act (DCRAA), and thus court could not disturb panel's jurisdictional decision on the merits, where panel had authority "to determine all disputes among the parties relating to this contract," objection had not been made to panel's rulings in its order, and challenge amounted to dispute regarding scope of carve-out. *Foulger-Pratt Residential Contr., LLC v. Madrigal Condos., LLC*, 779 F.Supp.2d 100, 2011 U.S. Dist. LEXIS 45167 (2011), appeal dismissed by 2011 U.S. App. LEXIS 17665 (D.C. Cir. July 7, 2011).

Party had not been denied full and fair hearing by arbitration panel's delaying hearing of some issues but not postponing consideration of other issues that were ripe and over which panel had jurisdiction. *Foulger-Pratt Residential Contr., LLC v. Madrigal Condos., LLC*, 779 F.Supp.2d 100, 2011 U.S. Dist. LEXIS 45167



(2011), appeal dismissed by 2011 U.S. App. LEXIS 17665 (D.C. Cir. July 7, 2011).

Arbitration panel did not exceed its authority under District of Columbia Revised Uniform Arbitration Act (DCRAA) by granting pre-award interest after panel had found in favor of general contractor on its claim that property owner had breached parties' contract by delaying final completion of project, where contract did not restrict interest awards on amounts arising from party's breach of contract. *Foulger-Pratt Residential Contr., LLC v. Madrigal Condos., LLC*, 779 F.Supp.2d 100, 2011 U.S. Dist. LEXIS 45167 (2011), appeal dismissed by 2011 U.S. App. LEXIS 17665 (D.C. Cir. July 7, 2011).

New provision of Uniform Arbitration Act, under which the court may vacate an award made in an arbitration proceeding "on other reasonable ground," does not authorize de novo review of an arbitrator's award; rather, the Court of Appeals' review of an arbitration award is still extremely limited. *A1 Team United States Holdings, LLC v. Bingham McCutchen LLP*, 998 A.2d 320, 2010 D.C. App. LEXIS 342 (2010).

Trial court, in considering client's motion to vacate arbitration award ordering client to pay law firm legal fees in fee dispute, was justified in interpreting "other reasonable ground" language of new provision of the Uniform Arbitration Act permitting court to vacate an award made in the arbitration proceeding "on other reasonable ground," as not being a grant of de novo review to trial courts in vacating arbitration awards and declining to review merits of client's allegations, as new statute did not authorize de novo review of an arbitrator's award. *A1 Team United States Holdings, LLC v. Bingham McCutchen LLP*, 998 A.2d 320, 2010 D.C. App. LEXIS 342 (2010).

While the Court of Appeals reviews a trial court's judgment confirming an arbitration award de novo, the Court will not set aside an arbitration award for errors of either law or fact made by the arbitrator. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Because an arbitrator is not required to hear all the evidence proffered by a party, courts on review only evaluate whether the arbitrator gave each of the parties to the dispute an adequate opportunity to present its evidence and argument. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Courts when reviewing arbitration awards are neither required nor authorized to comb the record for technical errors in the receipt or rejection of evidence by arbitrators; rather, review is restricted to determining whether the procedure was fundamentally unfair. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Record was inadequate for Court of Appeals to review Superior Court's decision denying investors' application to vacate the arbitration award of three-member arbitration panel from National Association of Securities Dealers Dispute Resolution, Inc. (NASD), which award denied their claims of fraud, negligence, breach of fiduciary duty, and breach of contract against securities brokerage firm and two financial advisors employed by the firm, relating to advisors' alleged failure to diversify the investments in the investors' self-directed equities portfolios; investors were seeking relief based upon testimony that they asserted came in during course of arbitration hearing, but they failed to provide Court of Appeals with transcript of testimony during arbitration hearing, such transcript could have been produced, and investors merely provided Court of Appeals with affidavit of one investor describing the evidence that both parties submitted to arbitration panel. *Dolton v. Merrill Lynch*, 935 A.2d 295, 2007 D.C. App. LEXIS 562 (2007).

In reviewing whether an arbitrator has exceeded his powers pursuant to the District of Columbia Uniform Arbitration Act, courts do not review the arbitration award on the merits. *Fairman v. District of Columbia*, 934 A.2d 438, 2007 D.C. App. LEXIS 640 (2007).

Typically, awards resulting from an arbitration may be vacated or modified only on grounds clearly specified by statute. *Shore v. Groom Law Group*, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

While court inquiry may be undertaken where it appears that the arbitrator manifestly disregarded the law, the nature and extent of that inquiry may be limited, particularly if the arbitrator's decision does not approach being arbitrary and capricious. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

Judicial review of an arbitrator's decision is extremely limited, and a party seeking to set it aside has a heavy burden. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

In ruling on a challenge to an arbitration award, the Court of Appeals must determine whether the trial court correctly applied the standards set forth in the Arbitration Act to the facts of the case. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Judicial review of arbitration awards is limited. D.C. Code 1981, § 16-4311(a). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real Estate Servs.*, 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

In reviewing whether an arbitrator has exceeded his powers, as ground to vacate an arbitration award, Court of Appeals does not review the arbitration award on the merits. D.C. Code 1981, § 16-4311(a)(3). *Laszlo N. Tauber, M.D. & Assocs. v. Trammell Crow Real*

Estate Servs., 738 A.2d 1214, 1999 D.C. App. LEXIS 237 (1999).

Under New Jersey law, if parties to a contract wish to have review by a court of legal decisions of arbitrators, they must specify the standard in the contract, thereby precluding any argument that an arbitral award should be overturned based on a disregard of the law. *Cellular Radio Corp. v. Oki Am.*, 664 A.2d 357, 1995 D.C. App. LEXIS 171 (1995).

Arbitrator's decision that dispute is arbitrable is not entitled to any degree of deference by trial court on motion to vacate or confirm arbitral award. D.C. Code 1981, §§ 16-4301, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Arbitrator had authority to decide whether party who entered contracts for renovation on houses was unlicensed home-improvement contractor, in violation of District of Columbia Home Improvement Licensing Regulations and, thus, Superior Court lacked authority to set aside arbitrator's award construction contract disputes. D.C. Code 1981, §§ 16-4311, 16-4317(a)(3). *Shaff v. Skahill*, 617 A.2d 960, 1992 D.C. App. LEXIS 306 (1992).

Courts cannot set aside arbitration awards for errors of law or fact made by arbitrator. D.C. Code 1981, § 16-4311. *Shaff v. Skahill*, 617 A.2d 960, 1992 D.C. App. LEXIS 306 (1992).

Grounds for vacating an arbitration award under subsections (a)(3) and (a)(5) include whether the arbitrator decided issues in excess of his authority under the arbitration clause of the contract, and whether contractor individually was not a party to the contract or had not agreed to arbitration. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

Judicial review of an arbitration award is limited to the five grounds provided in subsection (a). *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

An arbitration award must be upheld if the contract's arbitration clause is "susceptible of an interpretation" that covers the disputes put before the arbitrator; this is a matter to be determined by the court de novo. *Feinstone v. Potomac Group, Inc.*, 122 WLR 233 (Super. Ct. 1993).

### Statute of limitations.

Employer's failure to move to vacate arbitration award within applicable 90-day statute of limitations barred employer from raising affirmative defense of fraud in enforcement proceeding; contract statute of limitations was not applicable to defense of fraud in enforcement proceeding. D.C. Code 1981, § 16-4311(b). *Local Union 26, International Brotherhood of Electrical Workers v. CWS Electric*, 669 F. Supp. 495, 1986 U.S. Dist. LEXIS 17293 (1986).

Claims by laidoff employees that employer and union violated Labor Management Rela-

tions Act by breaching terms of collective bargaining agreement, and that union further breached its duty fairly unlawfully to represent employees by denying their grievances, were barred by District of Columbia statute which requires action to vacate an arbitration award to be filed within 90 days of the award employee seeks to vacate, since employees' claim was not filed until more than a year after union responded to employees' grievances. *Labor Management Relations Act*, 1947, § 301, 29 U.S.C. § 185; D.C. Code 1981, § 16-4311(b). *Orange v. Safeway Stores, Inc.*, 556 F. Supp. 510, 1983 U.S. Dist. LEXIS 19824 (1983), affirmed without opinion by 725 F.2d 126, 34 Fair Empl. Prac. Cas. (BNA) 1008, 116 L.R.R.M. (BNA) 2095 (D.C. Cir. 1984).

Plaintiff's action alleging that his discharge by defendant violated terms of collective bargaining agreement was time-barred where he did not file the action within 90 days of his receipt of notice of final action on his grievance as required by District of Columbia statute. D.C. Code 1981, § 16-4311(b). *Ogunloye v. John Hancock Mut. Life Ins., Co.*, 545 F. Supp. 1118, 1982 U.S. Dist. LEXIS 14246 (1982), affirmed without opinion by 713 F.2d 865, 230 U.S. App. D.C. 71 (1983).

By failing to urge grounds for vacation of arbitration award within 90-day statutory limit, any right to challenge that award was waived. D.C. Code 1981, §§ 16-4301 et seq., 16-4310. *Walter A. Brown, Inc. v. Moylan*, 509 A.2d 98, 1986 D.C. App. LEXIS 328 (1986).

Fact that petition was filed to confirm arbitration award within 90 days after delivery of award to parties did not extend 90-day statutory period within which requests for vacation of award must be presented. D.C. Code 1981, §§ 16-4301 et seq., 16-4310. *Walter A. Brown, Inc. v. Moylan*, 509 A.2d 98, 1986 D.C. App. LEXIS 328 (1986).

Any defense of lack of personal responsibility under contract in dispute that could have survived a waiver analysis when respondent participated in an arbitration hearing held in accordance with the construction industry arbitration rules of the American Arbitration Association could not have been entertained by the trial court at a time beyond the 90-day period for filing motion to modify or correct the arbitration award. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

Application to vacate arbitration award on ground of lack of personal liability, filed over nine months after arbitrators had dismissed application to modify award, was untimely. D.C. Code 1981, § 16-4309. *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

Motion to vacate arbitration award was time barred, where motion was filed five months



after date of award. D.C. Code 1981, § 16-4311(b). *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

Joint venturer's motion for reconsideration of confirmation of arbitration award was not timely, where it was not filed within 90 days after delivery of copy of award to movant. D.C. Code 1981, §§ 16-4310, 16-4311(b); Civil Rule 59(e). *Poire v. Kaplan*, 491 A.2d 529, 1985 D.C. App. LEXIS 384 (1985).

#### **Undue means.**

Even assuming the Arbitration Act provision, allowing an award procured by "undue means" to be vacated, was broad enough to cover the alleged conduct of arbitration association's staff, association case administrators' ex parte discussions with church about whether to hold pre-hearing conference did not require award for church to be vacated in dispute with architect, where association's rules allowed parties to directly communicate with case administrators. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Assuming the Arbitration Act provision, allowing an award procured by "undue means" to be vacated, was broad enough to cover the

alleged conduct of arbitration association's staff, the staff's conduct in delaying the arbitration process during settlement discussions, which architect alleged had constituted a "special favor" to church, did not require award for church to be vacated, where association's rules allowed an extension of any period of time under the rules, for good cause. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Even assuming Arbitration Act provision, allowing award procured by "undue means" to be vacated, was broad enough to cover alleged conduct of arbitration association's staff, the staff's failure to provide architect with additional biographical information requested by architect regarding potential arbitrators, before architect was required to submit his objections and rankings, did not require award for church to be vacated; there was no showing of staff's bad faith, and nothing in the additional information suggested the arbitrator eventually chosen by association was the "wrong man for the job" or suggested why architect would have struck the arbitrator based on the additional information. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

### **§ 16-4424. Modification or correction of award.**

(a) Upon motion made within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

(d) Irrespective of the time periods established in subsection (a) of this section and § 16-4423(c), a consumer may also seek to modify or vacate an award issued pursuant to a consumer arbitration agreement within 30 days of receiving notice of a motion to confirm the award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 24 of the Uniform Arbitration Act (2000).

## CASE NOTES

### ANALYSIS

Construction with federal law.

In general.

Jurisdiction.

Objections.

Remand.

Review.

Statute of limitations.

### Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

### In general.

After delivering their award, the arbitrators cannot again act upon the case without new authority. *Talbott v. Hartley*, 23 F.Cas. 650, 1801 U.S. App. LEXIS 293 (1801).

Although separation agreements and arbitration are similar to extent that both reduce court congestion and afford parties opportunity to settle their disputes without court intervention, with speed, economy and substantial finality, if arbitration is undertaken, rule of court in interpreting arbitration decision may be more limited than it would be were court interpreting separation agreement, and unlike separation agreement, there is statutory time within which party may seek modification or vacation of arbitration decision. D.C. Code 1981, §§ 16-4311, 16-4312. *Spencer v. Spencer*, 494 A.2d 1279, 1985 D.C. App. LEXIS 414 (1985).

Usual procedure for seeking reconsideration of an arbitration award is to note an appeal and then request that the appeal be held in abeyance until the motion to reconsider is decided. *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

### Jurisdiction.

On motion to confirm arbitral award, trial court had authority to determine whether dispute was arbitrable, despite movant's contention that, by participating in arbitration proceeding, nonmovant irrevocably submitted to authority of arbitrator and that arbitrator had exclusive authority to decide who was party to agreement containing that arbitration clause; Uniform Arbitration Act (UAA) specifically contemplated determination by court whether ar-

bitration agreement requires person to submit to arbitration. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Vague assertions that arbitrators had exceeded their powers and that trial court lacked personal and subject matter jurisdiction over respondent, set forth as defenses in response to claimant's petition to confirm arbitration award without any supporting memorandum of law to explain what was meant thereby, were insufficient to qualify as objections to award on personal liability grounds. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

### Objections.

Party who participates in arbitration over its objection is not barred from raising that objection after the award. D.C. Code 1981, §§ 16-4302, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

### Remand.

Remand to trial court was required for judicial determination of arbitrability of claim against movant seeking to have arbitral award set aside. *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

Remand for reinstatement of arbitration award in connection with contract dispute between parties also required additional fact finding on question of discrepancy between face amount of award and total value of items listed in schedule prepared by arbitrators in accordance with the construction industry arbitration rules of the American Arbitration Association and for a determination of the interest owing, if any, on the award. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

### Review.

In ruling on a challenge to an arbitration award, the Court of Appeals must determine whether the trial court correctly applied the standards set forth in the Arbitration Act to the facts of the case. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Arbitrator's decision that dispute is arbitrable is not entitled to any degree of deference by trial court on motion to vacate or confirm arbi-



tral award. D.C. Code 1981, §§ 16-4301, 16-4311(a)(5). *Grad v. Wetherholt Galleries*, 660 A.2d 903, 1995 D.C. App. LEXIS 126 (1995).

#### **Statute of limitations.**

Renovation company which did not challenge arbitration award within 90 days of entry did not waive its right to challenge award where challenge involved issue of fraudulent inducement to enter into arbitration agreement, which had been raised in preaward proceedings that were not governed by 90-day time limit, raising challenge again at any earlier point would have been futile after claim had been dismissed by trial court with prejudice, and appellate court had expressly reserved merits of issue until appeal from final arbitration

award had been taken. D.C. Code 1981, §§ 16-4302, 16-4311, 16-4312. *Hercules & Co. v. Shama Restaurant Corp.*, 613 A.2d 916, 1992 D.C. App. LEXIS 224 (1992).

Any defense of lack of personal responsibility under contract in dispute that could have survived a waiver analysis when respondent participated in an arbitration hearing held in accordance with the construction industry arbitration rules of the American Arbitration Association could not have been entertained by the trial court at a time beyond the 90-day period for filing motion to modify or correct the arbitration award. D.C. Code 1981, §§ 16-4301, 16-4302(b), 16-4309, 16-4311(a)(5), (b), 16-4312(a). *Jaffe v. Nocera*, 493 A.2d 1003, 1985 D.C. App. LEXIS 399 (1985).

### **§ 16-4425. Judgment on award; attorney's fees and litigation expenses.**

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under § 16-4422, 16-4423, or 16-4424, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 25 of the Uniform Arbitration Act (2000).

#### **CASE NOTES**

##### **ANALYSIS**

Attorney fees.  
Construction with federal law.  
In general.  
Res judicata.  
Review.

##### **Attorney fees.**

Tenant was not entitled under costs provision of District of Columbia Arbitration Act (DCAA) to attorney fees incurred when it filed motion to confirm arbitration award regarding decennial increase in annual rent due landlord under 99-year ground lease, even if "costs" under the DCAA included attorney fees, as the ground lease containing the parties' arbitration agree-

ment was made before the enactment of the DCAA. *Cathedral Ave. Coop., Inc. v. Carter*, 947 A.2d 1143, 2008 D.C. App. LEXIS 240 (2008).

##### **Construction with federal law.**

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

##### **In general.**

However an arbitration proceeding may have begun, whether with or without court participation, once an arbitration tribunal has ren-

dered award, winning party may ask the court to confirm the award and enter judgment accordingly. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

### Res judicata.

Under District of Columbia law, unconfirmed arbitration award, which was rendered after District of Columbia court ordered parties to submit breach of contract claim to binding arbitration, was a final and binding decision on the merits, and thus had preclusive effect barring, on res judicata grounds, subsequent federal court action involving identical claim; confirmation by the District of Columbia court was a summary process and was mandatory since no basis for vacating or modifying or correcting the award had been advanced within the time limits imposed by the D.C. arbitration statute. *Camp v. Kollen*, 567 F.Supp.2d 170, 2008 U.S. Dist. LEXIS 56911 (2008).

### Review.

The virtual omission of review of an arbitration decision for legal mistake, both at common law and under the District of Columbia Arbitration Act (DCAA), reflects a policy, inherent in election of arbitration over a judicial trial, that the parties have bargained for the arbitrators' judgment, even more than for legal correctness, and thus should not be deprived of that judgment. *Cathedral Ave. Coop., Inc. v. Carter*, 947 A.2d 1143, 2008 D.C. App. LEXIS 240 (2008).

A court will not review an arbitration decision on the merits. *Cathedral Ave. Coop., Inc. v. Carter*, 947 A.2d 1143, 2008 D.C. App. LEXIS 240 (2008).

Terminated employee failed to file her motion to vacate the final judgment confirming an arbitration award within one year after the judgment was entered, and thus, she was not entitled to relief from the judgment on the grounds that the award was allegedly procured by fraud. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 2004 D.C. App. LEXIS 445 (2004).

In ruling on a challenge to an arbitration award, the Court of Appeals must determine whether the trial court correctly applied the standards set forth in the Arbitration Act to the facts of the case. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Order denying confirmation of arbitration award is an appealable order even though trial court proceedings are not final. D.C. Code 1981, § 16-4317(a)(3). *Shaff v. Skahill*, 617 A.2d 960, 1992 D.C. App. LEXIS 306 (1992).

Appellate court's proper analogue on review of dismissal of claims of fraudulent inducement to enter arbitration agreement, when dismissal is based strictly on pleadings without conducting evidentiary hearing on fraud issue prior to submitting contract to arbitration, is rules relating to dismissal for failure to state claim; plaintiff is entitled to evidentiary hearing only if the complaint alleges facts sufficient to support fraud claim. Civil Rules 12(b), c), 56. *Hercules & Co. v. Shama Restaurant Corp.*, 613 A.2d 916, 1992 D.C. App. LEXIS 224 (1992).

Denials, but not grants, of stays of litigation pending arbitration are appealable interlocutory orders, since only orders that frustrate, in contrast with facilitate, arbitration impose a sufficiently serious injury to justify an immediate appeal. D.C. Code 1973, § 11-721(a)(2)(A), (d). *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

If one party has sued for breach of contract and the defendant moves to stay litigation pending arbitration, an order granting or denying the stay is not an appealable final decision under statute governing final decision of district courts. 18 U.S.C. § 1291. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Order compelling arbitration, which is not included in list of orders deemed final under the Uniform Arbitration Act and which does not dispose of entire case on merits, is interlocutory and hence unappealable under the Act. D.C. Code 1973, § 11-721(a)(1); D.C. Code 1978 Supp., Tit. 16 App. § 18. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

## § 16-4426. Jurisdiction.

(a) A court of the District of Columbia having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in the District of Columbia confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)



**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 26 of the Uniform Arbitration Act (2000).

## § 16-4427. Appeals.

(a) An appeal may be taken from:

- (1) An order denying or granting a motion to compel arbitration;
- (2) An order granting a motion to stay arbitration;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A final judgment entered pursuant to this chapter.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 28 of the Uniform Arbitration Act (2000).

### CASE NOTES

#### ANALYSIS

Confirmation of award.

Construction with federal law.

In general.

Jurisdiction.

Motions and orders to compel arbitration.

Scope of review.

Stay of litigation.

Validity.

#### Confirmation of award.

Confirmed arbitration decision is considered final because for all practical purposes it signifies the end of the proceeding on the merits. *Shore v. Groom Law Group*, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Assuming that employer wrongfully withheld documents from employee prior to arbitration on employee's wrongful termination claim, such action did not amount to a grave miscarriage of justice so as to allow court to independently act to relieve employee from final judgment confirming the arbitration award in the absence of a timely motion to vacate the judgment, where the employer did not prevent an issue from being joined or a party from making a valid claim or defense, employee's own testimony at arbitration was contrary to what her newly discovered documents purported to say, and employee acquiesced in the alleged non-production and raised no objection during the arbitration. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 2004 D.C. App. LEXIS 445 (2004).

In enacting Uniform Arbitration Act (UAA), District of Columbia Council did not attempt to effect general policy against piecemeal review embodied in statute governing appeals from interlocutory orders; therefore, in absence of entry of judgment by trial court, order confirming arbitral award as to fewer than all claims and all parties to action is not appealable. D.C. Code 1981, §§ 11-721, 16-4317; Civil Rule 54(b). *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Order denying confirmation of arbitration award is an appealable order even though trial court proceedings are not final. D.C. Code 1981, § 16-4317(a)(3). *Shaff v. Skahill*, 617 A.2d 960, 1992 D.C. App. LEXIS 306 (1992).

Order confirming or denying confirmation of an arbitration award is a final appealable order. D.C. Code 1981, § 16-4317(a)(1, 3). *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

Even though trial court's order did not specifically state that it "confirmed" arbitration award, such order was a "final order" for purposes of appeal, in that order finally determined the rights and obligations of the parties. D.C. Code 1981, §§ 11-721(a)(1), 16-4311(d), 16-4317(a)(1, 3). *Tung v. W.T. Cabe & Co.*, 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

An order confirming an arbitration award is an appealable order. D.C. Code 1981, § 16-4317(a)(3). *Poire v. Kaplan*, 491 A.2d 529, 1985 D.C. App. LEXIS 384 (1985).

#### Construction with federal law.

Federal court decisions construing and ap-

plying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

In interpreting Human Rights Act, courts generally look to cases from federal court involving claims brought under Civil Rights Act of 1964 for guidance and have adopted those precedents when appropriate. D.C. Code 1981, §§ 1-2501 to 1-2557. *Benefits Communications Corp. v. Klieforth*, 642 A.2d 1299, 1994 D.C. App. LEXIS 91 (1994).

### **In general.**

Term "final" used in statute governing appeals from interlocutory orders is not synonymous with "appealable." D.C. Code 1981, § 16-4317. *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

If a party filed an equitable action, whether the trial court's order sends the parties into or keeps them out of arbitration, the order is not appealable. 18 U.S.C. §§ 1291, 1292(a)(1). *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Trial court's order denying appellant's motion to confirm arbitration award, vacating the award, and ordering the parties to trial, is an appealable interlocutory order dissolving an injunction. D.C. Code 1973, § 11-721(a)(2)(A), (d). *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

### **Jurisdiction.**

The Court of Appeals had power under the All Writs Act to issue preliminary injunction against arbitration of dispute over government contract; appellate jurisdiction was implicated in the ultimate resolution of the issues of arbitrability and the jurisdiction of the Contract Appeals Board (CAB) to decide, in the first instance, the arbitrability of contract disputes under the District of Columbia Procurement Practices Act (PPA). *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Uniform Arbitration Act (UAA) did not confer jurisdiction upon Court of Appeals to review order confirming arbitral award while related claim against another party was pending before trial court in same case, absent proper order for entry of judgment. D.C. Code 1981, §§ 11-721, 11-721(a)(1), 16-4317; Civil Rule 54(b). *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Arbitrator had authority to decide whether party who entered contracts for renovation on houses was unlicensed home-improvement contractor, in violation of District of Columbia Home Improvement Licensing Regulations and, thus, Superior Court lacked authority to

set aside arbitrator's award construction contract disputes. D.C. Code 1981, §§ 16-4311, 16-4317(a)(3). *Shaff v. Skahill*, 617 A.2d 960, 1992 D.C. App. LEXIS 306 (1992).

### **Motions and orders to compel arbitration.**

Trial court's denial of shareholders' motion to compel arbitration, of claim brought by property owner who sought to pierce corporate veil of construction company in order to collect an underlying arbitration award, was a final and immediately appealable judgment, pursuant to Uniform Arbitration Act. *Giron v. Dodds*, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

Property owner's claim seeking to pierce corporate veil of construction company in order to collect arbitration award from company's shareholders did not involve a dispute arising out of or relating to the underlying arbitrable breach of contract action, but instead arose out of owner's efforts to collect the arbitration award, and thus, trial court appropriately denied shareholders' motion to compel arbitration; after being awarded a money judgment, owner sought to hold company's shareholders individually liable for the arbitration award on the theory that those shareholders essentially looted the company. *Giron v. Dodds*, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

While an order which effectively denies arbitration is appealable, an order dismissing a case in favor of arbitration, which is interpreted as a motion to compel arbitration, is not appealable. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

The denial of a motion to compel arbitration is deemed to be a final order for purposes of an appeal. D.C. Code 1981, § 16-4317(a)(1). *National Trade Prods. v. Information Dev. Corp.*, 728 A.2d 106, 1999 D.C. App. LEXIS 101 (1999).

Since buyer's motion to dismiss seller's breach of contract action was essentially a motion to compel arbitration, the denial of the motion was immediately appealable. D.C. Code 1981, § 16-4317(a)(1). *National Trade Prods. v. Information Dev. Corp.*, 728 A.2d 106, 1999 D.C. App. LEXIS 101 (1999).

Order compelling arbitration of claims against individual firm members was unappealable interlocutory order. D.C. Code 1981, §§ 11-721(a), 16-4317. *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Denial of motion to dismiss complaint, or any count thereof, alleging breach of contract, on ground that contract requires arbitration, is immediately appealable under statute making denial of motion to compel arbitration final for purposes of appeal. D.C. Code 1981, §§ 16-4302(a), 16-4317, 16-4317(a)(1). *Hercules & Co. v. Beltway Carpet Service, Inc.*, 592 A.2d 1069, 1991 D.C. App. LEXIS 181 (1991).



Appeal must be taken from order of court confirming arbitration decision to challenge order compelling arbitration. D.C. Code 1981, § 16-4317(a). *Haynes v. Kuder*, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

Denial of defendant's motion to compel arbitration, which was to be reconsidered only if defendant met certain conditions, and not subsequent order of default after defendant failed to meet the conditions, constituted denial of compelled arbitration subject to an immediate right of appeal, and though the entry of default eight months later may have reaffirmed the denial of the original motion seeking arbitration, it did not revive the appeal right. D.C. Code 1981, § 16-4317; Court of Appeals Rule 4(a)(1). *Robinson v. Booker*, 561 A.2d 483, 1989 D.C. App. LEXIS 138 (1989).

Since an order refusing to compel arbitration disposes of the entire case on the merits, it is appealable as a final order. 18 U.S.C. § 1291. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Order compelling arbitration, which is not included in list of orders deemed final under the Uniform Arbitration Act and which does not dispose of entire case on merits, is interlocutory and hence unappealable under the Act. D.C. Code 1973, § 11-721(a)(1); D.C. Code 1978 Supp., Tit. 16 App. § 18. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

#### Scope of review.

In ruling on a challenge to an arbitration

award, the Court of Appeals must determine whether the trial court correctly applied the standards set forth in the Arbitration Act to the facts of the case. *Sanders v. Maple Springs Baptist Church*, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

#### Stay of litigation.

If one party has sued for breach of contract and the defendant moves to stay litigation pending arbitration, an order granting or denying the stay is not an appealable final decision under statute governing final decision of district courts. 18 U.S.C. § 1291. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Denials, but not grants, of stays of litigation pending arbitration are appealable interlocutory orders, since only orders that frustrate, in contrast with facilitate, arbitration impose a sufficiently serious injury to justify an immediate appeal. D.C. Code 1973, § 11-721(a)(2)(A), (d). *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

#### Validity.

Interpreting Uniform Arbitration Act (UAA) to permit appellate review of order confirming arbitration award as to fewer than all parties or claims, by creating appellate jurisdiction where none previously existed, could possibly contravene Home Rule Act and render statute invalid. D.C. Code 1981, §§ 1-233(a)(4), 16-4317. *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

## § 16-4428. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 29 of the Uniform Arbitration Act (2000).

### CASE NOTES

#### In general.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act. *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 2008 D.C. App. LEXIS 355 (2008).

Interpretations of Federal Arbitration Act are persuasive authority for interpreting identical provisions of District of Columbia's version of Uniform Arbitration Act. 9 U.S.C. §§ 1-16; D.C. Code 1981, §§ 16-4301 to 16-4319. *Masurovsky v. Green*, 687 A.2d 198, 1996 D.C. App. LEXIS 294 (1996), amended by 1997 D.C. App. LEXIS 54 (D.C. Mar. 4, 1997).

## § 16-4429. Relationship to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 et. seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 30 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4430. Regulation of arbitration organizations.

(a) Any arbitration organization that administers or otherwise is involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable database that permits searching with multiple search terms in the same search, and is accessible at the Internet website of the arbitration organization, if any, and on paper, upon request, all of the following information regarding each consumer arbitration it has administered or otherwise been involved in within the preceding 5 years:

(1) The name of any corporation or other business entity that is party to the arbitration.

(2) The type of dispute involved, including goods, banking, insurance, health care, debt collection, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges:

(A) Less than \$100,000;

(B) From \$100,000 to \$250,000, inclusive; and

(C) More than \$250,000;

(3) Whether the consumer was the prevailing party;

(4) The number of occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitration organization;

(5) Whether the consumer party was represented by an attorney and, if so, the identifying information for that attorney, including the attorney's name, the name of the attorney's firm, and the city in which the attorney's office is located;

(6) The date the arbitration organization received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization;

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing;

(8) The amount of the claim, the amount of the award, and any other relief granted, if any; and



(9) The name of the arbitrator, the arbitrator's fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) If the information required by subsection (a) of this section is provided by the arbitration organization in a computer-searchable format at the company's Internet website and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the required information is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(c) No arbitration organization shall have any liability for collecting, publishing, or distributing the information in accordance with this section.

(d)(1) All fees and costs charged to or assessed in the District of Columbia upon a consumer by an arbitration organization in a consumer arbitration shall be waived for any person having a gross monthly income that is less than 300% of the federal poverty guidelines issued annually by the United States Department of Health and Human Services.

(2) Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitration organization indicating the consumer's monthly income and the number of persons living in the household. No arbitration organization may require a consumer to provide any further statement or evidence of indigence. The form, and the information contained therein, shall be confidential and shall not be disclosed to any adverse party or any nonparty to the arbitration.

(3) An arbitration organization shall not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(e) Nothing in the section shall affect the ability of an arbitration organization to shift fees that would otherwise be charged or assessed upon a consumer party to another party.

(f) Before requesting or obtaining any fee, an arbitration organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(g) No neutral arbitrator or arbitration organization shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by any opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(h) No arbitration organization may administer a consumer arbitration to be conducted in the District of Columbia, or provide any other services related to such a consumer arbitration, if:

(1) The arbitration organization has, or within the preceding year has had, a financial interest in any party or attorney for a party; or

(2) Any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the arbitration organization.

(i) Where this section is violated, any affected person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the arbitration organization from violating the section and order such restitution as appropriate. The arbitration organization shall be liable for that person or entity's reasonable attorney fees and costs where that person or entity prevails or where, after the action is commenced, the arbitration organization voluntarily complies with the section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.

## § 16-4431. Disclosure of arbitration costs.

(a) A party drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:

(1) The filing fee;

(2) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;

(3) Other charges that the arbitrator or arbitration organization will assess in conjunction with an arbitration where the consumer appears in person; and

(4) The proportion of these costs which each party bears in the event that the consumer prevails, and in the event that the consumer does not prevail.

(b) The costs specified in subsection (a) of this section need not include attorney fees, and, to the extent that, with regard to the disclosures required by subsection (a) of this section, a precise amount is not known, the disclosures may be based on reasonable, good-faith estimates. A party providing a reasonable, good-faith cost estimate shall not be liable in any manner for the fact that the actual cost of a particular arbitration varies from the estimate provided.

(c)(1) Failure to comply with this section is not grounds to refuse to enforce an arbitration agreement, but may constitute a violation of § 28-3904.

(2) The information provided in the disclosure can be considered in a determination of whether an arbitration agreement is unconscionable or otherwise is not enforceable under other law.

(d) Where this section is violated, any person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the drafting party from violating this section as to agreements it enters into in the future. The drafting party shall be liable to the person or entity bringing such an action for that person or entity's reasonable attorney fees and costs where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with the section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401.



**§ 16-4432. Savings clause.**

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter. Subject to § 16-4403, an arbitration agreement made before the effective date of this chapter is governed by §§ 16-4301 to 16-4319.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

**Legislative history of Law 17-111.** — For Law 17-111, see notes following § 16-4401. tion is based upon § 33 of the Uniform Arbitration Act (2000).

**Editor's notes.** — Uniform Law: This sec-

CHAPTER 45. UNIFORM CHILD CUSTODY PROCEEDINGS [REPEALED].

Sec.  
16-4501 to 16-4524. [Repealed].

§ 16-4501. Purposes of chapter. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2001, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4501.

**Legislative history of Law 4-200.** — Law 4-200, the “District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Marital or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 13-293.** — Law 13-293, the “Uniform Child-Custody Jurisdiction and Enforcement Act of 2000”, was introduced in Council and assigned Bill No. 13-608, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-600 and transmitted to both Houses of Congress for its review. D.C. Law 13-293 became effective on April 27, 2001.

**Editor’s notes.** — Uniform Law: This section is based upon § 1 of the Uniform Child Custody Jurisdiction Act.

§ 16-4502. Definitions. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 2, 32 DCR 30; Apr. 27, 2000, D.C. Law 13-293, § 2(c) 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4502.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 5-159.** — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for review.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor’s notes.** — Uniform Law: This section is based upon § 2 of the Uniform Child Custody Jurisdiction Act.

§ 16-4503. Exercise of jurisdiction. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4503.

**Legislative history of Law 4-200.** — For

legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.



**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 3 of the Uniform Child Custody Jurisdiction Act.

## § 16-4504. Notice and opportunity to be heard. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 300 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4504.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 4 of the Uniform Child Custody Jurisdiction Act.

## § 16-4505. Notice to persons outside the District; submission to jurisdiction. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4505.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 5 of the Uniform Child Custody Jurisdiction Act.

## § 16-4506. Simultaneous proceedings in other states. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4506.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 6 of the Uniform Child Custody Jurisdiction Act.

## § 16-4507. Inconvenient forum. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4507.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 7 of the Uniform Child Custody Jurisdiction Act.

## § 16-4508. Jurisdiction declined by reason of conduct. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4508.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 8 of the Uniform Child Custody Jurisdiction Act.

## § 16-4509. Information under oath to be submitted to the Superior Court. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4509.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 9 of the Uniform Child Custody Jurisdiction Act.

## § 16-4510. Additional parties. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4510.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 10 of the Uniform Child Custody Jurisdiction Act.

## § 16-4511. Appearance of parties and the child. [Repealed].

Repealed.



(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4511.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 11 of the Uniform Child Custody Jurisdiction Act.

## § 16-4512. Binding force and res judicata effect of custody decree. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4512.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 12 of the Uniform Child Custody Jurisdiction Act.

## § 16-4513. Recognition of out-of-state custody decrees. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4513.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 13 of the Uniform Child Custody Jurisdiction Act.

## § 16-4514. Modification of custody decree of another state. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4514.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 14 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4515. Filing and enforcement of custody decree of another state. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4515.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501. Attorney fees. Subsection (d) does not require an explicit finding by the trial court that a party has violated an out-of-state custody order before it can award attorney's fees

and expenses. *Bliss v. Bliss*, App. D.C., 733 A.2d 954 (1999).

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 15 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4516. Registry of out-of-state custody decrees and proceedings. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 3, 32 DCR 30; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4516.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 5-159.** — For legislative history of D.C. Law 5-159, see His-

torical and Statutory Notes following § 16-4502.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 16 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4517. Certified copies of custody decree. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4517.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 17 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4518. Taking testimony in another state. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Mar. 14, 1985, D.C. Law 5-159, § 4, 32 DCR 30; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)



**Prior Codifications.** — 1981 Ed., § 16-4518.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 5-159.** — For legislative history of D.C. Law 5-159, see His-

torical and Statutory Notes following § 16-4502.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 18 of the Uniform Child Custody Jurisdiction Act.

## § 16-4519. Hearings and studies in another state; orders to appear. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4519.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 19 of the Uniform Child Custody Jurisdiction Act.

## § 16-4520. Assistance to courts of other states. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4520.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 20 of the Uniform Child Custody Jurisdiction Act.

## § 16-4521. Preservation of documents for use in other states. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4521.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 21 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4522. Request for court records of another state. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4522.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 22 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4523. International application. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4523.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 23 of the Uniform Child Custody Jurisdiction Act.

**§ 16-4524. Severability. [Repealed].**

Repealed.

(Mar. 10, 1983, D.C. Law 4-200, § 2, 30 DCR 125; Apr. 27, 2000, D.C. Law 13-293, § 2(c), 48 DCR 2214.)

**Prior Codifications.** — 1981 Ed., § 16-4524.

**Legislative history of Law 4-200.** — For legislative history of D.C. Law 4-200, see Historical and Statutory Notes following § 16-4501.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Editor's notes.** — Uniform Law: This section is based upon § 25 of the Uniform Child Custody Jurisdiction Act.



## CHAPTER 46. UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT.

### *Subchapter I. General Provisions*

- Sec.  
 16-4601.01. Definitions.  
 16-4601.02. Proceedings governed by other law.  
 16-4601.03. Application to Indian tribes.  
 16-4601.04. International application of chapter.  
 16-4601.05. Effect of child-custody determination.  
 16-4601.06. Priority.  
 16-4601.07. Notice to persons outside the District.  
 16-4601.08. Appearance and limited immunity.  
 16-4601.09. Communication between courts.  
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### *Subchapter II. Jurisdiction*

- 16-4602.01. Initial child-custody jurisdiction.  
 16-4602.02. Exclusive, continuing jurisdiction.  
 16-4602.03. Jurisdiction to modify determination.  
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 16-4602.06. Simultaneous proceedings.  
 16-4602.07. Inconvenient forum.  
 16-4602.08. Jurisdiction declined by reason of conduct.  
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### *Subchapter III. Enforcement*

- 16-4603.01. Definitions.  
 16-4603.02. Enforcement under Hague Convention.  
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### Sec.

- 16-4603.05. Registration of child-custody determination.  
 16-4603.06. Enforcement of registered determination.  
 16-4603.07. Simultaneous proceedings.  
 16-4603.08. Expedited enforcement of child-custody determination.  
 16-4603.09. Service of petition and order.  
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 16-4603.12. Costs, fees, and expenses.  
 16-4603.13. Recognition and enforcement.  
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 16-4603.15. Role of Attorney General for the District of Columbia.  
 16-4603.16. Role of law enforcement.  
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### *Subchapter IV. Child Abduction Prevention*

- 16-4604.01. Short title.  
 16-4604.02. Definitions.  
 16-4604.03. Cooperation and communication among courts.  
 16-4604.04. Actions for abduction prevention measures.  
 16-4604.05. Jurisdiction.  
 16-4604.06. Contents of petition.  
 16-4604.07. Factors to determine risk of abduction.  
 16-4604.08. Provisions and measures to prevent abduction.  
 16-4604.09. Warrant to take physical custody of child.  
 16-4604.10. Duration of abduction prevention order.

### *Subchapter V. Miscellaneous Provisions*

- 16-4605.01. Uniformity of application and construction.  
 16-4605.02. Relation to Electronic Signatures in Global and National Commerce Act.  
 16-4605.03. Transitional provision.

## *Subchapter I. General Provisions.*

### § 16-4601.01. Definitions.

For the purposes of this chapter, the term:

- (1) "Abandoned" means left without provision for reasonable and necessary care or supervision.
- (2) "Child" means an individual who has not attained 18 years of age.
- (3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation

with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, adoption, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter III of this chapter.

(5) “Commencement” means the filing of the first pleading in a proceeding.

(6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(7) “District” means the District of Columbia.

(8) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(9) “Initial determination” means the first child-custody determination concerning a particular child.

(10) “Issuing court” means the court that makes a child-custody determination for which enforcement is sought under this chapter.

(11) “Issuing state” means the state in which a child-custody determination is made.

(12) “Modification” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(13) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(14) “Person acting as a parent” means a person, other than a parent, who:

(A) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) Has been awarded legal custody by a court or claims a right to legal custody under the law of the District.

(15) “Physical custody” means the physical care and supervision of a child.

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.



(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 165-4501.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## CASE NOTES

### ANALYSIS

Child-custody proceeding.  
Construction with federal law.  
Home state.  
In general.  
Modification.

### Child-custody proceeding.

The phrase "a proceeding concerning the custody of the child" is not to be given a restrictive, narrow or crabbed interpretation, but is entitled to a broad and reality-oriented interpretation. *Ex Parte In the Matter of the Petition of J.D.S. and A.F.C. for Adoption of Minor Child*, 125 WLR 1809 (Super. Ct. 1997).

### Construction with federal law.

Court's decision to decline jurisdiction on the basis that the District of Columbia was an inconvenient forum to make custody determination and that Virginia was a more appropriate forum was properly made under the Uniform Child Custody Jurisdiction Act (UCCJA) and was compatible with the provisions of the Parental Kidnapping Prevention Act (PKPA), where Virginia court had exercised emergency jurisdiction to make temporary custody determination at the request of the mother who had moved with the child from the District of Columbia to Virginia. D.C. Code 1981, §§ 16-4503(a)(1)(B), 16-4507(c); 18 U.S.C. § 1738 *Rees v. Reyes*, 602 A.2d 1137, 1992 D.C. App. LEXIS 44 (1992), writ of certiorari denied by 503 U.S. 991, 112 S. Ct. 1686, 118 L. Ed. 2d 400, 1992 U.S. LEXIS 2435, 60 U.S.L.W. 3717 (1992).

When compliance with both state's Uniform Child Custody Jurisdiction Act and federal Parental Kidnapping Prevention Act (PKPA) proves "literally impossible," the PKPA controls pursuant to the supremacy clause, even though the PKPA generally does not completely preempt state child custody jurisdiction law. 18 U.S.C. § 1738A; U.S. Const. Art. 6, cl. 2. *In re B.B.R.*, 566 A.2d 1032, 1989 D.C. App. LEXIS 243 (1989).

### Home state.

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action,

though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custodial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. *Kenda v. Pleskovic*, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

Virginia was not "home state" of child who did not live in Virginia from birth but, rather, was moved there by his mother from the District of Columbia within days after birth, for purposes of determining jurisdiction of superior court in proceedings on father's complaint seeking joint custody of child. *Carl v. Tirado*, 945 A.2d 1208, 2008 D.C. App. LEXIS 126 (2008).

Under Parental Kidnapping Prevention Act, if any state qualifies as child's "home state," that state has exclusive jurisdiction over custody matters. 18 U.S.C. § 1738A(b)(4), (g). *In re B.B.R.*, 566 A.2d 1032, 1989 D.C. App. LEXIS 243 (1989).

### In general.

Court in District of Columbia was precluded from proceeding with any child custody action if at time before proceeding was filed in District, there was already pending in another state a proceeding where court was exercising jurisdiction consistently with provisions of Parental Kidnapping Prevention Act. 18 U.S.C. § 1738A(g). *In re B.B.R.*, 566 A.2d 1032, 1989 D.C. App. LEXIS 243 (1989).

In custody dispute, failure to apply policy and provisions of Uniform Child Custody Jurisdiction Act, which is designed to deter child snatching by, inter alia, substantially limiting power of courts to legitimize de facto custody possession by parents who take children across state lines for purpose of obtaining initial custody determination, in advance of legislative adoption, was not abuse of discretion, and child's physical presence, though resulting from

## § 16-4601.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

father's deception, was sufficient to warrant exercise of jurisdiction. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

If applied with eye towards its underlying purpose, the Uniform Child Custody and Jurisdiction Act will generally deny access to courts to parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of child, and Act would be applicable where parent removed child to obtain initial custody determination and hence did not

violate terms of existing decree. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

### **Modification.**

Child custody decrees are by nature ever modifiable, and, accordingly, full faith and credit did not preclude court in District of Columbia from changing custody decree of Ohio court. D.C. Code 1981, § 16-4501 et seq.; U.S. Const. Art. 4, § 1. *Bennett v. Bennett*, 595 F. Supp. 366, 1984 U.S. Dist. LEXIS 16319 (1984).

## § 16-4601.02. Proceedings governed by other law.

This chapter does not govern a proceeding pertaining to the authorization of emergency medical care for a child.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 103 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4601.03. Application to Indian tribes.

A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act of 1978, approved November 8, 1978 (92 Stat. 3069; 25 U.S.C. § 1901 et seq.), is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act of 1978.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 104 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4601.04. International application of chapter.

(a) A court of the District shall treat a foreign country as if it were a state of the United States for the purpose of applying subchapters I and II of this chapter.

(b) Except as otherwise provided in subsection (c) of this section, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter III of this chapter.

(c) A court of the District need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)



**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

#### CASE NOTES

##### **In general.**

Evidence was sufficient to support trial court's finding that husband was given an adequate opportunity to be heard by the Russian court, but chose not to take that opportunity, for purposes of determining whether Russian

child custody order should be enforced; husband had been granted several continuances by Russian court which gave him ample time to secure a visa, and he was represented by Russian counsel at the hearing. *Bliss v. Bliss*, 733 A.2d 954, 1999 D.C. App. LEXIS 153 (1999).

### § 16-4601.05. Effect of child-custody determination.

A child-custody determination made by a court of the District that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of the District or notified in accordance with § 16-4601.07 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 106 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4601.06. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 107 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4601.07. Notice to persons outside the District.

(a) Notice required for the exercise of jurisdiction when a person is outside the District may be given in a manner prescribed by the law of the District for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of the District or by the law of the state in which the service is made.

## § 16-4601.08 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 108 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4601.08. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in the District for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in the District on a basis other than physical presence is not immune from service of process in the District. A party present in the District who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in the District.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 109 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4601.09. Communication between courts.

(a) A court of the District may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, the term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.



(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4601.10. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in the District for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of the District may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of the District shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of the District by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4601.11. Cooperation between courts; preservation of records.

(a) A court of the District may request the appropriate court of another state to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that state;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the court of the District a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding, with or without the child.

(b) Upon request of a court of another state, a court of the District may hold a hearing or enter an order described in subsection (a) of this section.

## § 16-4602.01 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of the District.

(d) A court of the District shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

tion is based upon § 112 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

### *Subchapter II. Jurisdiction.*

## § 16-4602.01. Initial child-custody jurisdiction.

(a) Except as otherwise provided in § 16-4602.04, a court of the District has jurisdiction to make an initial child-custody determination only if:

(1) The District is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from the District, but a parent or person acting as a parent continues to live in the District;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that the District is the more appropriate forum under §§ 16-4602.07 or 16-4602.08, and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with the District other than mere physical presence; and

(B) Substantial evidence is available in the District concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of the District is the more appropriate forum to determine the custody of the child under §§ 16-4602.07 or 16-4602.08; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of the District.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)



**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 201 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

#### CASE NOTES

##### ANALYSIS

Appropriate forum.  
Estoppel.  
In general.  
Movement of parties.  
Physical presence.  
Review.  
Significant connection.

##### Appropriate forum.

Court's decision to decline jurisdiction on the basis that the District of Columbia was an inconvenient forum to make custody determination and that Virginia was a more appropriate forum was properly made under the Uniform Child Custody Jurisdiction Act (UCCJA) and was compatible with the provisions of the Parental Kidnapping Prevention Act (PKPA), where Virginia court had exercised emergency jurisdiction to make temporary custody determination at the request of the mother who had moved with the child from the District of Columbia to Virginia. D.C. Code 1981, §§ 16-4503(a)(1)(B), 16-4507(c); 18 U.S.C. § 1738 Rees v. Reyes, 602 A.2d 1137, 1992 D.C. App. LEXIS 44 (1992), writ of certiorari denied by 503 U.S. 991, 112 S. Ct. 1686, 118 L. Ed. 2d 400, 1992 U.S. LEXIS 2435, 60 U.S.L.W. 3717 (1992).

##### Estoppel.

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action, though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custodial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. Kenda v. Pleskovic, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

##### In general.

Virginia, which was legal residence of child

and former wife, was home state and had jurisdiction to make child custody determination under its own law and jurisdictional provisions of Parental Kidnapping Prevention Act, even though District of Columbia apparently had jurisdiction under its own law to make child custody determination, where District of Columbia no longer had continuing jurisdiction to make determination. 18 U.S.C. §§ 1738A(c)(1, 2), (c)(2)(A, D, E), (d, f, g), (f)(2); Va.Code 1950, §§ 20-125 to 20-146; D.C. Code 1981, §§ 16-4501 to 16-4524, 16-4503(a)(1). Maxie v. Fernandez, 649 F. Supp. 627, 1986 U.S. Dist. LEXIS 16835 (1986).

Trial court had jurisdiction over neglect proceeding of child, even though child resided in a neighboring state, which was child's "home state" under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), as child's home state declined jurisdiction on basis that District of Columbia had a significant connection to the matter and would be a more appropriate forum to determine child's custody, child and her parents had significant contacts with the District based upon mother's status as a ward of the District, including Child and Family Services Agency's (CFSAs) ongoing oversight of mother's family and custody matters, and child's father's longstanding residence in the District, and it would undercut remedial intent of the UCCJEA to prevent the District from exercising its jurisdiction, in that the District had the resources to most expediently remove child from circumstances of neglect. In re J.R., 33 A.3d 397, 2011 D.C. App. LEXIS 695 (2011).

Virginia courts under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) had exclusive and continuing jurisdiction over child custody proceedings, despite biological mother's subsequent move to District of Columbia with the parties' child, where Virginia was the home state of the child when biological father commenced his child custody proceeding in Virginia, Virginia proceeding was never stayed, and, though an earlier petition for custody that mother filed in the District was the first filing for child custody by either party, mother voluntarily withdrew her first request for child custody that she had filed in the District. Upson v. Wallace, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

Trial court had subject matter to issue permanent child support order, even though parties no longer resided in District of Columbia, where mother and child resided in District at time mother filed action and issues to be determined at time of filing had not yet been resolved. *Brown v. Hines-Williams*, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

Superior court had jurisdiction to entertain father's complaint seeking joint custody of child resident in Virginia with mother, where Virginia was not child's home state, father resided in District of Columbia, child was baptized in District of Columbia, father cared for child in District of Columbia on daily basis before returning child to mother in the evenings, father had extended family members who lived in District of Columbia, and mother had availed herself of District of Columbia's courts for purpose of obtaining child support. *Carl v. Tirado*, 945 A.2d 1208, 2008 D.C. App. LEXIS 126 (2008).

Principle that person may not take advantage of his own wrong, purpose of Uniform Child Custody Jurisdiction Act (UCCJA) to deter unilateral removals of children, and subject matter jurisdiction of District of Columbia court over proceeding justified denial of father's motion to dismiss mother's child custody proceeding in District on forum non conveniens grounds, given that only reason child was absent from District where mother resided was that father had improperly and unlawfully removed her to North Carolina without mother's consent in order to claim custody. *Mitchell v. Hughes*, 755 A.2d 456, 2000 D.C. App. LEXIS 155 (2000).

Superior court could properly enjoin private adoption agency to return child to Florida authorities or to assist District and Florida authorities in obtaining actual custody of child, even though agency was not party to Florida proceedings changing custody of child from mother to Florida Department of Health and Rehabilitative Services (DHRS), as agency had notice of Florida orders and admittedly acted in concert with child's mother, who was enjoined by Florida proceeding. *In re E.Q.B.*, 617 A.2d 199, 1992 D.C. App. LEXIS 284 (1992).

Superior Court has jurisdiction over infant born in California and brought to the District of Columbia by prospective adoptive parents, with natural mother's consent, the day after birth. *Platt v. Rogers*, 114 WLR 801 (Super. Ct. 1986).

Adopted father's relinquishment of child to paternal grandparents held sufficient to confer jurisdiction under subsection (a)(3). *Platt v. Rogers*, 114 WLR 801 (Super. Ct. 1986).

#### **Movement of parties.**

Superior Court order for child support issued

against father, which was properly entered initially in divorce action where court had jurisdiction over father, did not lose its validity when either or both parents moved out of the District and resided elsewhere. D.C. Code 1981, §§ 16-916(c), 16-4503(a). *Desai v. Fore*, 711 A.2d 822, 1998 D.C. App. LEXIS 89 (1998).

#### **Physical presence.**

Before District of Columbia had adopted the Uniform Child Custody Jurisdiction Act, physical presence of children was sufficient to warrant exercise of jurisdiction by the courts in the District of Columbia. D.C. Code 1981, § 16-4501 et seq.; U.S. Const. Art. 4, § 1. *Bennett v. Bennett*, 595 F. Supp. 366, 1984 U.S. Dist. LEXIS 16319 (1984).

In custody dispute, failure to apply policy and provisions of Uniform Child Custody Jurisdiction Act, which is designed to deter child snatching by, inter alia, substantially limiting power of courts to legitimize de facto custody possession by parents who take children across state lines for purpose of obtaining initial custody determination, in advance of legislative adoption, was not abuse of discretion, and child's physical presence, though resulting from father's deception, was sufficient to warrant exercise of jurisdiction. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

#### **Review.**

Mother, who at trial on motion to modify child visitation provisions of New York divorce decree did not object to exercise of jurisdiction by trial court in the District of Columbia, waived on appeal her claims that visitation issue should be considered all over again by court in New York as "home state" of either of two children, under the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA); District of Columbia was most convenient forum to mother and least convenient to father, a resident of New Jersey. D.C. Code 1981, § 16-4502(5); 18 U.S.C. § 1738A(b)(4). *B.J.P. v. R.W.P.*, 637 A.2d 74, 1994 D.C. App. LEXIS 9 (1994).

#### **Significant connection.**

Entering of divorce decree in the District nine years earlier did not create a "significant connection with the District" under paragraph (a)(2) permitting adjudication of custody and support claims of nonresident parties. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).



## § 16-4602.02. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in § 16-4602.04, a court of the District which has made a child-custody determination consistent with §§ 16-4602.01 or 16-4602.03 has exclusive, continuing jurisdiction over the determination until:

(1) A court of the District determines that neither the child, nor the child and one parent, nor the child and any person acting as a parent have a significant connection with the District and that substantial evidence is no longer available in the District concerning the child's care, protection, training, and personal relationships; or

(2) A court of the District or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the District.

(b) A court of the District which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 16-4602.01.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 202 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### CASE NOTES

#### **Estoppel.**

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action, though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custo-

dial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. *Kenda v. Pleskovic*, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

## § 16-4602.03. Jurisdiction to modify determination.

Except as otherwise provided in § 16-4602.04, a court of the District may not modify a child-custody determination made by a court of another state unless a court of the District has jurisdiction to make an initial determination under § 16-4602.01(a)(1) or (2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under § 16-4602.02 or that a court of the District would be a more convenient forum under § 16-4602.07; or

(2) A court of the District or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

## § 16-4602.04 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 203 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4602.04. Temporary emergency jurisdiction.

(a) A court of the District has temporary emergency jurisdiction if the child is present in the District and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 16-4602.01 through 16-4602.03, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 16-4602.01 through 16-4602.03. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 16-4602.01 through 16-4602.03, a child-custody determination made under this section becomes a final determination, if it so provides, and the District becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under §§ 16-4602.01 through 16-4602.03, any order issued by a court of the District under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under §§ 16-4602.01 through 16-4602.03. The order issued in the District remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of the District which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under §§ 16-4602.01 through 16-4602.03, shall immediately communicate with the other court. A court of the District which is exercising jurisdiction pursuant to §§ 16-4602.01 through 16-4602.03, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)



**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 204 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4602.05. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of § 16-4601.07 must be given to all persons entitled to notice under the law of the District as in child-custody proceedings between residents of the District, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of the District as in child-custody proceedings between residents of the District.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 205 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4602.06. Simultaneous proceedings.

(a) Except as otherwise provided in § 16-4602.04, a court of the District may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of the District is a more convenient forum under § 16-4602.07.

(b) Except as otherwise provided in § 16-4602.04, a court of the District, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 16-4602.09. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of the District shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of the District is a more appropriate forum, the court of the District shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of the District shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of

## § 16-4602.07 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### CASE NOTES

#### **Construction and application.**

Virginia courts under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) had exclusive and continuing jurisdiction over child custody proceedings, despite biological mother's subsequent move to District of Columbia with the parties' child, where Virginia was the home state of the child when biological father commenced his child custody proceeding in Virginia, Virginia proceeding was never stayed, and, though an earlier petition for custody that mother filed in the District was the first filing for child custody by either party, mother voluntary withdrew her first request for

child custody that she had filed in the District. *Upson v. Wallace*, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

Court in District of Columbia was precluded from proceeding with any child custody action if at time before proceeding was filed in District, there was already pending in another state a proceeding where court was exercising jurisdiction consistently with provisions of Parental Kidnapping Prevention Act. 18 U.S.C. § 1738A(g). In re B.B.R., 566 A.2d 1032, 1989 D.C. App. LEXIS 243 (1989).

## § 16-4602.07. Inconvenient forum.

(a) A court of the District which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of the District shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside the District;

(3) The distance between the court in the District and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;



(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of the District determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of the District may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## CASE NOTES

### ANALYSIS

Burden of proof.

Findings.

In general.

### Burden of proof.

Defendant claiming benefit of doctrine of forum non conveniens bears burden of establishing that balance of equitable considerations is strongly in his favor; unless defendant meets this heavy burden, plaintiff's choice of forum will not be disturbed. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

### Findings.

Trial court's failure to make findings which would warrant dismissal of child custody proceeding on forum non conveniens grounds required vacation of order dismissing action, in child custody proceeding. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

### In general.

Principle that person may not take advantage of his own wrong, purpose of Uniform Child Custody Jurisdiction Act (UCCJA) to deter unilateral removals of children, and sub-

ject matter jurisdiction of District of Columbia court over proceeding justified denial of father's motion to dismiss mother's child custody proceeding in District on forum non conveniens grounds, given that only reason child was absent from District where mother resided was that father had improperly and unlawfully removed her to North Carolina without mother's consent in order to claim custody. *Mitchell v. Hughes*, 755 A.2d 456, 2000 D.C. App. LEXIS 155 (2000).

Forum non conveniens objection may be made at any time. D.C. Code 1981, § 13-425. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Husband was not entitled to grant of motion for forum non conveniens in action by wife seeking child support based upon his allegation that wife and children were domiciled in Minnesota and that, therefore, Minnesota was proper forum for wife's claims, as husband presented no reasons why family division was inconvenient or inappropriate forum. D.C. Code 1981, § 13-425; Fed.R.Civ.Proc. Rule 12(h), 18 U.S.C. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

## § 16-4602.08. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in § 16-4602.04, if a court of the District has jurisdiction under this chapter because a person seeking to invoke its

## § 16-4602.09 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under §§ 16-4602.01 through 16-4602.03 determines that the District is a more appropriate forum under § 16-4602.07; or

(3) No court of any other state would have jurisdiction under the criteria specified in §§ 16-4602.01 through 16-4602.03.

(b) If a court of the District declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under §§ 16-4602.01 through 16-4602.03.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against the District unless authorized by law other than this chapter.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### CASE NOTES

#### **In general.**

If applied with eye towards its underlying purpose, the Uniform Child Custody and Jurisdiction Act will generally deny access to courts to parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of child, and Act would be appli-

cable where parent removed child to obtain initial custody determination and hence did not violate terms of existing decree. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

## § 16-4602.09. Information to be submitted to court.

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any



other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a) (1) through (3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 209 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4602.10. Appearance of parties and child.

(a) In a child-custody proceeding in the District, the court may order a party to the proceeding who is in the District to appear before the court in person, with or without the child. The court may order any person who is in the District and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside the District, the court may order that a notice given pursuant to section 16-4601.07 include a statement directing the party to appear in person, with or without the child, and informing the party that failure to appear may result in a decision adverse to the party.

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(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside the District is directed to appear under subsection (b) of this section or desires to appear personally before the court, with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 210 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

*Subchapter III. Enforcement.*

**§ 16-4603.01. Definitions.**

For the purposes of this subchapter, the term:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 301 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**§ 16-4603.02. Enforcement under Hague Convention.**

Under this subchapter, a court of the District may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 302 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**§ 16-4603.03. Duty to enforce.**

(a) A court of the District shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdic-



tion in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of the District may utilize any remedy available under other law of the District to enforce a child-custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 303 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4603.04. Temporary visitation.

(a) A court of the District which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of the District makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter II of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 304 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4603.05. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in the District, with or without a simultaneous request for enforcement, by sending to the Superior Court of the District of Columbia:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in § 16-4602.9, the name and address of the person seeking registration and of any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

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(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subsection (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) of this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of the District;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of the notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under subchapter II of this chapter;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter II of this chapter; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 16-4601.07, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 305 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

CASE NOTES

**In general.**

Court was authorized to direct private adoption agency to pay Florida Department of

Health and Rehabilitative Services' (DHRS) filing fees, travel expenses, and other related costs of DHRS and its witness in enforcing



Florida custody orders in District of Columbia.  
D.C. Code 1981, § 16-4515(d). In re E.Q.B., 617  
A.2d 199, 1992 D.C. App. LEXIS 284 (1992).

### § 16-4603.06. Enforcement of registered determination.

(a) A court of the District may grant any relief normally available under the law of the District to enforce a registered child-custody determination made by a court of another state.

(b) A court of the District shall recognize and enforce, but may not modify, except in accordance with subchapter II of this chapter, a registered child-custody determination of a court of another state.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 306 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

### § 16-4603.07. Simultaneous proceedings.

If a proceeding for enforcement under this subchapter is commenced in a court of the District and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter II of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 307 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

### § 16-4603.08. Expedited enforcement of child-custody determination.

(a) A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

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(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from the Metropolitan Police Department or other law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under § 16-4603.05, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person, with or without the child, at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 16-4603.12, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under § 16-4603.05 and that:

(A) The issuing court did not have jurisdiction under subchapter II of this chapter;

(B) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter II of this chapter;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of § 16-4601.07, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under § 16-4603.04, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter II of this chapter.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 308 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).



## § 16-4603.09. Service of petition and order.

Except as otherwise provided in §§ 16-306 (adoptions), 16-2306 (neglect proceedings), 16-2357 (termination of parental rights), and 16-4603.11 (custody under emergency circumstances), the petition and order must be served upon respondent and any person who has physical custody of the child by any method authorized for the service of complaints under the rules for domestic relations proceedings adopted by the Board of Judges of the Superior Court of the District of Columbia.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01. tion is based upon § 309 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**Editor's notes.** — Uniform Law: This sec-

## § 16-4603.10. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to section 16-4602.04, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under section 16-4603.05 and that:

(A) The issuing court did not have jurisdiction under subchapter II of this chapter;

(B) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter II of this chapter; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 16-4601.07, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under section 16-4603.05 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter II of this chapter.

(b) The court shall award the fees, costs, and expenses authorized under section 16-4603.12 and may grant additional relief, including a request for the assistance of the Metropolitan Police Department or other law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent

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and child may not be invoked in a proceeding under this subchapter.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 310 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**§ 16-4603.11. Warrant to take physical custody of child.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from the District.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from the District, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 16-4603.08(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout the District. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 311 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

**§ 16-4603.12. Costs, fees, and expenses.**

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for



witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 312 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## CASE NOTES

### ANALYSIS

**Attorney fees.**  
In general.

#### **Attorney fees.**

Trial court did not abuse its discretion by denying former wife's request that former husband pay her attorney fees she incurred in child custody proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where the fees sought by one of the law firms representing former wife were incurred after the parties agreed to share custody of their child, Indiana court in a related proceeding had awarded former husband attorney fees which former wife had not paid, and trial court found that the attorneys who contributed the most to the child's best interest were the guardians ad litem. *Kenda v. Pleskovic*, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

Wife, who sought enforcement of Russian child custody order, was entitled to attorney fees; husband had violated the order, he did not make a good faith due process challenge to the Russian custody order, and the most appropriate way to return wife to her prior status, after she had been forced to retain counsel and fly to United States to enforce Russian custody decree, was to compensate her for the expenses,

including attorney fees, she incurred to regain her rightful custody of child. U.S. Const. Amend. 14; D.C. Code 1981, § 16-4515(d). *Bliss v. Bliss*, 733 A.2d 954, 1999 D.C. App. LEXIS 153 (1999).

#### **In general.**

Statute providing that person violating a custody decree of another state which makes it necessary to enforce the decree in the District of Columbia may be required to pay necessary expenses, including attorney fees, incurred by the party entitled to the custody does not require an explicit finding by the trial court that a party has violated an out-of-state custody order before it can award attorney fees and expenses. D.C. Code 1981, § 16-4515(d). *Bliss v. Bliss*, 733 A.2d 954, 1999 D.C. App. LEXIS 153 (1999).

In a situation where a party makes a legitimate argument in good faith contesting the enforceability in District of Columbia courts of a child custody order rendered in another jurisdiction, trial court should not automatically award attorney fees and other expenses to the custodial party, even if court were to determine on the merits that the order or decree is entitled to comity. D.C. Code 1981, § 16-4515(d). *Bliss v. Bliss*, 733 A.2d 954, 1999 D.C. App. LEXIS 153 (1999).

## § 16-4603.13. Recognition and enforcement.

A court of the District shall accord full faith and credit to an order issued by a court of another state and consistent with this chapter which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter II of this chapter.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

## § 16-4603.14 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 313 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4603.14. Appeals.

An appeal may be taken from a final order in a proceeding under this subchapter. The appeal shall be considered on an expedited basis. Unless the court enters a temporary emergency order under section 16-4602.04, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 314 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4603.15. Role of Attorney General for the District of Columbia.

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the Attorney General for the District of Columbia may take any lawful action, including resort to a proceeding under this subchapter or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) An existing child-custody determination;
- (2) A request to do so from a court in a pending child-custody proceeding;
- (3) A reasonable belief that a criminal statute has been violated; or
- (4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A member of the Office of the Attorney General for the District of Columbia acting under this section acts on behalf of the court and may not represent any party.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(b)(1), 56 DCR 1572.)

**Effect of amendments.** — D.C. Law 17-378, in the section heading and subsecs. (a) and (b), substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Legislative history of Law 17-378.** — Law 17-378, the "Uniform Child Abduction Act of 2008", was introduced in Council and assigned

Bill No. 17-626 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on January 29, 2009, it was assigned Act No. 17-716 and transmitted to both Houses of Congress for its review. D.C. Law 17-378 became effective on March 25, 2009.

**Editor's notes.** — Uniform Law: This sec-



tion is based upon § 315 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4603.16. Role of law enforcement.

At the request of a member of the Office of the Attorney General for the District of Columbia acting under section 16-4603.15, a member of the Metropolitan Police Department or other law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the Office of the Attorney General for the District of Columbia with responsibilities under section 16-4603.15.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(b)(2), 56 DCR 1572.)

**Effect of amendments.** — D.C. Law 17-378 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4603.15.

**Editor’s notes.** — Uniform Law: This section is based upon § 316 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

### § 16-4603.17. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the Office of the Attorney General for the District of Columbia and Metropolitan Police Department or other law enforcement officers under section 16-4603.15 or section 16-4603.16.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(b)(3), 56 DCR 1572.)

**Effect of amendments.** — D.C. Law 17-378 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4603.15.

**Editor’s notes.** — Uniform Law: This section is based upon § 317 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## *Subchapter IV. Child Abduction Prevention.*

### § 16-4604.01. Short title.

This subchapter may be cited as the “Uniform Child Abduction Prevention Act”.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Legislative history of Law 17-378.** — Law 17-378, the “Uniform Child Abduction Act of

2008”, was introduced in Council and assigned Bill No. 17-626 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008,

## § 16-4604.02 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

respectively. Signed by the Mayor on January 29, 2009, it was assigned Act No. 17-716 and transmitted to both Houses of Congress for its review. D.C. Law 17-378 became effective on March 25, 2009.

**Editor's notes.** — Former § 16-4604.01 has been recodified as § 16-4605.01 by D.C. Law 17-378, § 2(e).

Uniform Law: This section is based upon § 1 of the Uniform Child Abduction Prevention Act.

### § 16-4604.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Abduction” means the wrongful removal or wrongful retention of a child.

(2) “Child” means an unemancipated individual who is less than 18 years of age.

(3) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(4) “Petition” includes a motion or its equivalent.

(5) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) “Travel document” means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term “travel document” does not include a passport or visa.

(7) “Wrongful removal” means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state.

(8) “Wrongful retention” means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4601.01.

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01.

**Editor's notes.** — Former § 16-4604.02 has been recodified as § 16-4605.03 by D.C. Law 17-378, § 2(e).

Uniform Law: This section is based upon § 2 of the Uniform Child Abduction Prevention Act.

### § 16-4604.03. Cooperation and communication among courts.

Sections 16-4601.10, 16-4601.11, and 16-4601.12 apply to cooperation and communications among courts in proceedings under this subchapter.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Child Abduction Prevention Act.



**§ 16-4604.04. Actions for abduction prevention measures.**

(a) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this subchapter.

(c) The Attorney General for the District of Columbia may seek a warrant to take physical custody of a child under § 16-4604.09 or other appropriate prevention measures.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01. tion is based upon § 4 of the Uniform Child Abduction Prevention Act.

**Editor's notes.** — Uniform Law: This sec-

**§ 16-4604.05. Jurisdiction.**

(a) A petition under this subchapter may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under §§ 16-4601.01 to 16-4604.02.

(b) A court of this state has temporary emergency jurisdiction under § 16-4602.04 if the court finds a credible risk of abduction.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01. tion is based upon § 5 of the Uniform Child Abduction Prevention Act.

**Editor's notes.** — Uniform Law: This sec-

**§ 16-4604.06. Contents of petition.**

A petition under this subchapter shall be verified and include a copy of any existing child-custody determination, if available. The petition shall specify the risk factors for abduction, including the relevant factors described in § 16-4604.07. Subject to § 16-4602.09(e), if reasonably ascertainable, the petition shall contain:

- (1) The name, date of birth, and gender of the child;
- (2) The customary address and current physical location of the child;
- (3) The identity, customary address, and current physical location of the respondent;
- (4) A statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;
- (5) A statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

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(6) Any other information required to be submitted to the court for a child-custody determination under § 16-4602.09.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01. tion is based upon § 6 of the Uniform Child Abduction Prevention Act.

**Editor's notes.** — Uniform Law: This sec-

**§ 16-4604.07. Factors to determine risk of abduction.**

(a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

- (1) Has previously abducted or attempted to abduct the child;
- (2) Has threatened to abduct the child;

(3) Has recently engaged in activities that may indicate a planned abduction, including:

- (A) Abandoning employment;
- (B) Selling a primary residence;
- (C) Terminating a lease;

(D) Closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

(E) Applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(F) Seeking to obtain the child's birth certificate or school or medical records;

- (4) Has engaged in domestic violence, stalking, or child abuse or neglect;
- (5) Has refused to follow a child-custody determination;
- (6) Lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(7) Has strong familial, financial, emotional, or cultural ties to another state or country;

(8) Is likely to take the child to a country that:

(A) Is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(B) Is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) The Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) Is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(C) Poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;



(D) Has laws or practices that would:

(i) Enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(iii) Restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(E) Is included by the United States Department of State on a current list of state sponsors of terrorism;

(F) Does not have an official United States diplomatic presence in the country; or

(G) Is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) Is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) Has had an application for United States citizenship denied;

(11) Has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver's license, or other government-issued identification card, or has made a misrepresentation to the United States government;

(12) Has used multiple names to attempt to mislead or defraud; or

(13) Has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition under this subchapter, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01. tion is based upon § 7 of the Uniform Child Abduction Prevention Act.

**Editor's notes.** — Uniform Law: This sec-

## § 16-4604.08. Provisions and measures to prevent abduction.

(a) If a petition is filed under this subchapter, the court may enter an order that shall include:

(1) The basis for the court's exercise of jurisdiction;

(2) The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) A detailed description of each party's custody and visitation rights and residential arrangements for the child;

(4) A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) Identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under this subchapter or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child by a preponderance of the evidence, the court shall enter an abduction prevention order. The order shall include the provisions required by subsection (a) of this section and measures and conditions, including those in subsections (c), (d), and (e) of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider:

(1) The age of the child;

(2) The potential harm to the child from an abduction;

(3) The legal and practical difficulties of returning the child to the jurisdiction if abducted; and

(4) The reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one or more of the following:

(1) An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(A) The travel itinerary of the child;

(B) A list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(C) Copies of all travel documents;

(2) A prohibition of the respondent directly or indirectly:

(A) Removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) Removing or retaining the child in violation of a child-custody determination;

(C) Removing the child from school or a child-care or similar facility; or

(D) Approaching the child at any location other than a site designated for supervised visitation;

(3) A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) With regard to the child's passport:

(A) A direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) A requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) A prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) As a prerequisite to exercising custody or visitation, a requirement that the respondent provide:



(A) To the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) To the court:

(i) Proof that the respondent has provided the information in subparagraph (A) of this paragraph; and

(ii) An acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(C) To the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) A written waiver under 5 U.S.C. § 552a with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) Limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction; and

(3) Require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) Issue a warrant to take physical custody of the child under § 16-4604.09 or the law of this state other than this subchapter;

(2) Direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this subchapter or the law of this state other than this subchapter; or

(3) Grant any other relief allowed under the law of this state other than this subchapter.

(f) The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to prevent abduction.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

## § 16-4604.09 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 8 of the Uniform Child Abduction Prevention Act.

### § 16-4604.09. Warrant to take physical custody of child.

(a) If a petition under this subchapter contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) of this section shall be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) of this section to take physical custody of a child shall:

(1) Recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) Direct law enforcement officers to take physical custody of the child immediately;

(3) State the date and time for the hearing on the petition; and

(4) Provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant shall be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (a) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) This subchapter does not affect the availability of relief allowed under the law of this state other than this subchapter.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)



**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 9 of the Uniform Child Abduction Prevention Act.

## § 16-4604.10. Duration of abduction prevention order.

An abduction prevention order remains in effect until the earliest of:

- (1) The time stated in the order;
- (2) The emancipation of the child;
- (3) The child's attaining 18 years of age; or
- (4) The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under §§ 16-4602.01 to 16-4602.03.

(Mar. 31, 2009, D.C. Law 17-378, § 2(d), 56 DCR 1572.)

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4604.01.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 10 of the Uniform Child Abduction Prevention Act.

## *Subchapter V. Miscellaneous Provisions.*

## § 16-4605.01. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(c), (e), 56 DCR 1572.)

**Prior Codifications.** — 2001 Ed., § 16-4604.01.

**Effect of amendments.** — D.C. Law 17-378 amended the section by redesignating this section.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Legislative history of Law 17-378.** — Law 17-378, the "Uniform Child Abduction Act of 2008", was introduced in Council and assigned Bill No. 17-626 which was referred to the Com-

mittee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on January 29, 2009, it was assigned Act No. 17-716 and transmitted to both Houses of Congress for its review. D.C. Law 17-378 became effective on March 25, 2009.

**Editor's notes.** — Uniform Law: This section is based upon § 401 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).

## § 16-4605.02. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Mar. 31, 2009, D.C. Law 17-378, § 2(e), 56 DCR 1572.)

## § 16-4605.03 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

**Effect of amendments.** — D.C. Law 17-378 added this section.

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4605.01.

### § 16-4605.03. Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before April 27, 2001 is governed by the law in effect at the time the motion or other request was made.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(c), (e), 56 DCR 1572.)

**Prior Codifications.** — 2001 Ed., § 16-4604.02.

**Effect of amendments.** — D.C. Law 17-378 redesignated this section and substituted “April 27, 2001” for “the effective date of this chapter”.

**Legislative history of Law 13-293.** — For D.C. Law 13-293, see notes following § 16-4501.

**Legislative history of Law 17-378.** — For Law 17-378, see notes following § 16-4605.01.

**Editor’s notes.** — Uniform Law: This section is based upon § 402 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997 Act).



## CHAPTER 47. FREE FLOW OF INFORMATION.

Sec.

16-4701. Definitions.

16-4702. Compelled disclosure prohibited.

Sec.

16-4703. Compelled disclosure permitted.

16-4704. Activities not constituting a waiver.

## § 16-4701. Definitions.

For the purpose of this chapter, the term “news media” means:

- (1) Newspapers;
- (2) Magazines;
- (3) Journals;
- (4) Press associations;
- (5) News agencies;
- (6) Wire services;
- (7) Radio;
- (8) Television; or
- (9) Any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

(Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

**Prior Codifications.** — 1981 Ed., § 16-4701.

**Legislative history of Law 9-156.** — Law 9-156, the “Free Flow of Information Act of 1992,” was introduced in Council and assigned Bill No. 9-255, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-249 and transmitted to both Houses of Congress for its review. D.C. Law 9-156 became effective on September 26, 1992.

## § 16-4702. Compelled disclosure prohibited.

Except as provided in section 16-4703, no judicial, legislative, administrative, or other body with the power to issue a subpoena shall compel any person who is or has been employed by the news media in a news gathering or news disseminating capacity to disclose:

(1) The source of any news or information procured by the person while employed by the news media and acting in an official news gathering capacity, whether or not the source has been promised confidentiality; or

(2) Any news or information procured by the person while employed by the news media in the course of pursuing professional activities that is not itself communicated in the news media, including any:

- (A) Notes;
- (B) Outtakes;
- (C) Photographs or photographic negatives;
- (D) Video or sound tapes;
- (E) Film; or
- (F) Other data, irrespective of its nature, not itself communicated in the news media.

(Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682; July 25, 1995, D.C. Law 11-30, § 4, 42 DCR 1547.)

**Prior Codifications.** — 1981 Ed., § 16-4702.

**Legislative history of Law 9-156.** — For legislative history of D.C. Law 9-156, see Historical and Statutory Notes following § 16-4701.

**Legislative history of Law 11-30.** — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill

No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

## CASE NOTES

### In general.

Former candidate for governor was precluded by First Amendment from requiring newspaper and its employees to disclose reporter’s notes and other information from interview in his civil suit against hotel for breach of implied contract, negligence, and invasion of privacy based on hotel’s disclosure of his hotel registration records to reporter who used them as corroboration of charges that candidate was having extramarital affair; former candidate was seeking newsgathering activity protected by First Amendment, and he demonstrated no overwhelming or societal interest in overcoming presumption favoring First Amendment protection for reporter’s sources. U.S.C. Const.Amend. 1. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

To overcome prohibitions on ordering disclosure of sources of information for newsgatherer under Minnesota law, person seeking disclosure must establish by clear and convincing evidence that there is probable cause to believe that source has information clearly relevant to felony, that information cannot be obtained by any alternative means or remedy less destructive of First Amendment rights, and that there is compelling and overriding interest requiring disclosure where disclosure is necessary to prevent injustice. U.S. Const.Amend. 1; M.S.A. § 595.024, subd. 2. *Grunseth v. Marriott Corp.*,

868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

Former candidate for governor of Minnesota was not entitled to compel testimony of newspaper or any of its employees under the District of Columbia Free Flow of Information Act in candidate’s civil action against hotel for breach of implied contract and invasion of privacy, since he failed to establish by clear and convincing evidence that there was overriding public interest in disclosure. D.C. Code 1981, §§ 16-4701 to 16-4704. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

District of Columbia Free Flow of Information Act accords total protection to news sources, whether confidential or not, and whether disclosed to others or not. D.C. Code 1981, §§ 16-4701 to 16-4704. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

Former candidate for governor of Minnesota was not entitled to compel testimony of newspaper or any of its employees under Minnesota statute protecting newsgathering activities of reporters, where information sought did not relate to criminal offense, candidate failed to provide clear and convincing evidence that information cannot be obtained by any alternative means, and disclosure was not required to prevent injustice. M.S.A. §§ 595.022-595.025. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

## § 16-4703. Compelled disclosure permitted.

(a) A court may compel disclosure of news or information otherwise protected from disclosure under section 16-4702(2) if the court finds that the party seeking the news or information established by clear and convincing evidence that:

(1) The news or information is relevant to a significant legal issue before a judicial, legislative, administrative, or other body that has the power to issue a subpoena;

(2) The news or information could not, with due diligence, be obtained by any alternative means; and

(3) There is an overriding public interest in the disclosure.



(b) A court may not compel disclosure of the source of any information protected under section 16-4702.

(Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

**Prior Codifications.** — 1981 Ed., § 16-4703.

legislative history of D.C. Law 9-156, see Historical and Statutory Notes following § 16-4701.

**Legislative history of Law 9-156.** — For

#### CASE NOTES

##### **In general.**

To overcome prohibitions on ordering disclosure of sources of information for newsgatherer under Minnesota law, person seeking disclosure must establish by clear and convincing evidence that there is probable cause to believe that source has information clearly relevant to felony, that information cannot be obtained by

any alternative means or remedy less destructive of First Amendment rights, and that there is compelling and overriding interest requiring disclosure where disclosure is necessary to prevent injustice. U.S. Const. Amend. 1; M.S.A. § 595.024, subd. 2. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

### § 16-4704. Activities not constituting a waiver.

The publication by the news media or the dissemination by a person employed by the news media of a source of news or information, or a portion of the news or information, procured while pursuing professional activities shall not constitute a waiver of the protection from compelled disclosure that is contained in section 16-4702.

(Sept. 26, 1992, D.C. Law 9-156, § 2, 39 DCR 5682.)

**Prior Codifications.** — 1981 Ed., § 16-4704.

legislative history of D.C. Law 9-156, see Historical and Statutory Notes following § 16-4701.

**Legislative history of Law 9-156.** — For

#### CASE NOTES

##### **In general.**

District of Columbia Free Flow of Information Act accords total protection to news sources, whether confidential or not, and

whether disclosed to others or not. D.C. Code 1981, §§ 16-4701 to 16-4704. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 1994 U.S. Dist. LEXIS 19519 (1994).

CHAPTER 48. STANDBY GUARDIANSHIP.

Sec.

- 16-4801. Findings.
- 16-4802. Definitions.
- 16-4803. Designation of a standby guardian.
- 16-4804. Authority of the standby guardian.
- 16-4805. Petition for approval of standby guardianship.
- 16-4806. Court approval of standby guardian and alternate standby guardian.

Sec.

- 16-4807. Effect of filing standby guardianship petition.
- 16-4808. Notice.
- 16-4809. Challenging a standby guardianship designation.
- 16-4810. Revocation, repudiation, or rescission of standby guardianship.

§ 16-4801. Findings.

The Council of the District of Columbia finds that:

(1) Existing custody law does not provide adequately for the needs of a parent who is terminally ill, or who is periodically incapable of caring for the needs of a child due to the parent's incapacity or debilitation resulting from illness, and who desires to make long-term plans for the future of a child without terminating or limiting in any way the parent's legal rights.

(2) Children are becoming unnecessarily involved in adversarial court proceedings or are without legally sanctioned caretakers because their ill parents cannot or will not permanently or temporarily transfer care, custody, or control of their children to another person if such a transfer requires any limitation of the custodial parent's rights.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — Law 14-152, the "Standby Guardianship Act of 2002", was introduced in Council and assigned Bill No. 14-309, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March

5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 26, 2002, it was assigned Act No. 14-330 and transmitted to both Houses of Congress for its review. D.C. Law 14-152 became effective on June 25, 2002.

§ 16-4802. Definitions.

For the purposes of this chapter, the term:

(1) "Alternate standby guardian" means a person with all the rights, responsibilities, and qualifications of a standby guardian who acts as the standby guardian if the current or originally designated standby guardian repudiates the designation, becomes incapacitated, or dies.

(2) "Attending clinician" means a licensed physician or licensed nurse practitioner who:

(A) Has primary responsibility for the treatment and care of a designator;

(B) Shares the responsibility for the treatment and care of a designator, or is acting on behalf of the licensed physician or licensed nurse practitioner who has primary responsibility for the treatment and care of the designator; or

(C) Is familiar with the designator's medical condition in cases where no licensed physician or licensed nurse practitioner has the responsibility for the treatment and care of a designator.

(3) "Child" means a person under 18 years of age.



(4) “Consent” means a written authorization signed by the designator.

(5) “Court” means the Domestic Relations Branch of the Family Division [Family Court] of the Superior Court of the District of Columbia.

(6) “Debilitation” means those periods when a person cannot care for that person’s minor child as a result of a chronic condition caused by physical illness, disease, or injury from which, to a reasonable degree of probability, the designator may not recover.

(7) “Designation” means the written naming of a standby guardian by the designator.

(8) “Designator” means a custodial parent, including a person other than a parent who has physical custody of a child and who has been awarded legal custody or guardianship by a court, who has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover.

(9) “Determination of incapacity” means a written determination made by the attending clinician that, to a reasonable degree of certainty, a designator is chronically and substantially unable to understand the nature and consequences of decisions concerning the care of a minor child as a result of a mental or organic impairment and is consequently unable to care for the minor child.

(10) “Incapacity” means a chronic and substantial inability, as a result of a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of a minor child, and a consequent inability to care for the minor child.

(11) “Parent” means the biological parent or adoptive mother or father of a child.

(12) “Standby guardian” means a person named by the designator to assume the duties of a legal custodian of a child upon the occurrence of a triggering event.

(13) “Triggering event” means any of the following 3 events:

(A) The designator’s debilitation, with the designator’s written acknowledgement of debilitation and consent to commencement of the standby guardianship;

(B) The designator’s incapacity as determined by an attending clinician; or

(C) The designator’s death.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## **§ 16-4803. Designation of a standby guardian.**

(a) A designator may designate a standby guardian at any time.

(b) The designation of a standby guardian shall be in writing and shall contain the following information:

(1) The full name, address, birth date, and gender of the child affected;

(2) The full name, address, and telephone number of the designator; and

(3) If known, the names and addresses of any other persons having legal rights to the care, custody, or control of the child.

(c) The designation shall be signed by the designator. Another adult may sign the designation on behalf of the designator if the designator is physically unable to do so, the designator expressly requests that the adult sign the designation, and the adult signs the designation in the presence of the designator. The designated standby guardian or alternate standby guardian may not sign on behalf of the designator.

(d) The designation shall be signed and dated by the designator or the designator's proxy in the presence of 2 witnesses who shall be over 18 years of age and who cannot be the standby guardian or the alternate standby guardian. The witnesses shall indicate their witnessing of the signing of the designation by signing the designation.

(e) The designation shall include a statement that the designation is not valid until it is signed and witnessed as required by subsection (d) of this section.

(f) The standby guardian, and the alternate standby guardian, if one is designated, shall sign the executed designation to indicate acceptance of the standby guardianship.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## § 16-4804. Authority of the standby guardian.

(a) Upon the occurrence of a triggering event, the standby guardian shall have authority to act and shall assume the rights, powers, duties, and obligations existing under law between a legal custodian and a child. The designator shall retain concurrent authority over the child as the designator's health permits.

(b) If a clinician determines, at the request of the designator, that the designator is no longer incapacitated, or the designator withdraws the consent that acknowledged debilitation, the standby guardian shall no longer have authority to act as the child's legal custodian. Failure of a standby guardian to comply with this provision and to immediately return the child to the designator's care shall entitle the designator to an emergency hearing in a court of competent jurisdiction.

(c) The designation of a standby guardian does not extinguish or limit any rights, powers, duties, or obligations of the parent, legal custodian, or legal guardian, or of any other individual with parental or custodial rights existing at the time of the designation. The standby guardianship shall be construed so as to enable the designator to plan for the future care of a child, without terminating parental or legal rights, and to give the standby guardian the authority to act in a manner consistent with the known wishes of the designator regarding the care, custody, and support of the minor child.

(d) The commencement of the standby guardian's authority to act shall not divest the designator of any parental rights. A standby guardian shall assure



the designator frequent and continuing contact with and physical access to the child and, to the greatest extent possible, the involvement of the designator in the decision-making on behalf of the child.

(e) At the death of the designator, the standby guardian shall become the legal custodian of the child as defined in District of Columbia statutes.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## **§ 16-4805. Petition for approval of standby guardianship.**

(a) A petition for court approval of a designation under this chapter may be made at any time by filing with the Court the petition and a copy of the designation.

(1) If the triggering event has not occurred at or before the time of filing, only the designator may file the petition.

(2) If the triggering event has occurred at or before the time of filing, the standby guardian or alternate standby guardian named in the designation may file the petition.

(b) The petitioner shall state in the petition, under oath, the following:

(1) The name and address of the designator;

(2) The name, address, telephone number, and date of birth of the standby guardian who will obtain or has obtained custody of the child and any alternate standby guardian designated in the designation;

(3) That the authority of the standby guardian shall become effective upon the earliest occurrence of any one of the following events:

(A) The designator's debilitation, with the designator's acknowledgement of debilitation and written consent to commencement of the standby guardianship;

(B) Determination of incapacity of the designator; or

(C) The designator's death;

(4) A statement that the designator suffers from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover, and the basis for the statement, such as the date and source of medical diagnosis, without requiring the identification of the injury, disease, or illness in question;

(5) If incapacity is the triggering event, a determination of the designator's incapacity, signed and dated by the attending clinician;

(6) If debilitation is the triggering event, the designator's acknowledgement of the debilitation and consent to commencement of the standby guardianship, signed and dated by the designator;

(7) If death is the triggering event, the certificate of death for the designator;

(8) The full name and date of birth of the child who is the subject of the designation;

(9) The name and address of any other parent of the child whose identity and whereabouts are known to the petitioner or can be reasonably ascertained;

(10) Consent of the other parent, or a statement of any known reasons why that parent is not assuming or should not assume responsibility for the child;

(11) Whether there is any prior judicial history regarding custody of the child or any pending litigation regarding custody of the child;

(12) A brief statement as to why the granting of the petition would be in the best interest of the child who is the subject of the designation;

(13) The names and addresses of all persons who have lived with the child who is the subject of the designation for the 5 years immediately preceding the date the petition was filed or since the child's birth, if the child is less than 5 years old at the time the petition was filed; and

(14) A request that the court approve the designation.

(c) The standby guardian petitioning the court shall attach to the petition the following documentation or provide an explanation, under oath, as to why such documents are not attached:

(1) A copy of the designation;

(2) Proof of the triggering event;

(3) The child's birth certificate;

(4) Proof of notice of the petition and hearing, as required by this chapter; and

(5) Consent of the other parent, or a statement of any known reasons why that parent is not assuming or should not assume responsibility for the child.

(d) If filed after the triggering event, the petition shall be filed as soon as practicable after the occurrence of the triggering event, but in no event later than 90 days after the triggering event.

(e) The authority of the standby guardian shall cease upon his or her failure to file the petition within 90 days, but shall recommence upon the filing of the petition.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## § 16-4806. Court approval of standby guardian and alternate standby guardian.

(a) The Court shall enter an order approving the designation of the standby guardian if the Court determines that the appointment of the standby guardian is in the best interest of the child. Unless required to hold a hearing pursuant to subsection (i) of this section, the Court shall make its determination that the appointment of the standby guardian is in the best interest of the child based upon:

(1) The facts set forth in the petition; and

(2) A finding that the designator meets the definition of designator as that term is defined in § 16-4802(8).

(b) If requested in the petition, the Court may also approve an alternate standby guardian, identified by the designator, to act as the standby guardian



if the current or originally designated standby guardian repudiates the designation, becomes incapacitated, or dies.

(c) The order shall provide that, subject to restoration of the designator's ability to parent as provided in § 16-4804(b), the authority of the standby guardian to act as legal custodian of the child shall be effective upon the Court's receipt of, or immediately if the Court is in receipt of, one of the following documents:

(1) The written consent of the designator to the commencement of the standby guardianship;

(2) The determination of incapacity of the designator; or

(3) The designator's death certificate.

(d) Unless it appears on the face of the petition that requirements of this chapter have not been met, the Court shall grant the petition within 120 days of the filing of the petition, or within 20 days of the filing of proof of notice having been served on parties required to be served pursuant to § 16-4808, whichever occurs first. If the requirements of this chapter have not been met, the Court shall not dismiss the petition, but shall issue an order to the petitioner to appear in court within 30 days of issuance of the order to remedy the deficiencies in the petition or to show cause why the petition should be granted notwithstanding the deficiencies.

(e) There shall be a rebuttable presumption that Court approval of a standby guardian petition order is in the best interest of the child if:

(1) The designator is the sole surviving parent;

(2) The parental rights of any non-custodial parent have been terminated or relinquished; or

(3) All parties consent to the designation.

(f) A designation of a standby guardian shall constitute a rebuttable presumption that the designated standby guardian is capable of serving as standby guardian.

(g) The designation shall constitute evidence of the designator's wishes regarding the designator's children in the same manner as under § 16-911(a)(5).

(h) The Court may approve the designation without a hearing when:

(1) The designator is the sole surviving parent;

(2) The parental rights of any non-custodial parent have been terminated or relinquished;

(3) All parties consent to entry of the approval order; or

(4) The Court finds, after a review of a file, that the requirements of this chapter have been met.

(i) An order approving the standby guardianship shall not be entered without a hearing if:

(1) A noncustodial parent requests a hearing within 20 days of the date the noncustodial parent receives notice of the filing of the petition; or

(2) There is other litigation pending regarding custody of the child.

(j) If a hearing is held, it shall be conducted in accordance with the proceedings set forth in the District of Columbia statutes and rules relating to legal custody.

(k) Fees charged by the Court shall not exceed those fees assessed in a legal custody proceeding.

(l) Except upon motion for good cause shown, the designator is not required to appear in court if the designator is medically unable to appear.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## § 16-4807. Effect of filing standby guardianship petition.

(a) If the petition filed by the designator pursuant to § 16-4805 is approved by the Court before the occurrence of the triggering event, the standby guardian's authority will commence automatically upon the occurrence of the triggering event. No further petition or confirmation is necessary.

(b) If the petition for approval of the designation has not been filed before the occurrence of a triggering event, the standby guardian shall have temporary legal authority to act as legal custodian or guardian of the child without authorization of the Court for a period of 90 days from the date of the triggering event.

(1) Within the 90-day period following the occurrence of the triggering event, the standby guardian shall file a petition for approval of the standby guardian in accordance with § 16-4805.

(2) If a petition is not filed within the 90-day period, the standby guardian shall lose all authority to act as legal custodian or guardian. The authority of the standby guardian to act as legal custodian or guardian shall recommence upon the filing of the petition.

(c) If a petition for approval of a standby guardian is filed, but the court does not act upon it within the 90-day period following the occurrence of a triggering event, the standby guardian's temporary legal authority to act as legal custodian or guardian shall continue until the court orders otherwise.

(d) The commencement of a standby guardian's authority under this chapter may not divest a parent or legal guardian of any legal custodial, parental guardianship rights or custody.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

## § 16-4808. Notice.

(a) The petitioner shall notify any person named in the designation within 10 days of the filing of the petition of any hearing on that petition. Notice shall be attempted on all other persons who are entitled to notice under §§ 16-4501 through 16-4524 [repealed].

(b) Notice shall be by summons, including a copy of the designation, the petition, and documents required by this section.

(c) Notice is sufficient by mailing a copy of the executed copy of the petition,



the designation, and other documents required by § 16-4805(b) to those persons entitled to notice under this section. The mailing shall be by certified mail, restricted delivery, return receipt requested to the current or last-known address of a person entitled to notice.

(d) Notice may also be given in any other manner calculated to give notice and not prohibited by statute or court rule.

(e) If the petition alleges that a parent, legal custodian, or guardian cannot be located, reasonable efforts, such as those required in legal custody cases as described in § 13-336, shall be made by the petitioner to locate the other parents. Such efforts must be reported to the court.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

### **§ 16-4809. Challenging a standby guardianship designation.**

(a) An individual entitled to notice under §§ 16-4501 through 16-4524 (the Uniform Child Custody Jurisdiction Act) [repealed] may challenge a standby guardianship designation order by initiating a child custody proceeding in the Superior Court of the District of Columbia or in any court that could exercise jurisdiction in accordance with §§ 16-4501 through 16-4524.

(b) An order of custody issued by a court of competent jurisdiction supercedes any designation of standby guardianship.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.

### **§ 16-4810. Revocation, repudiation, or rescission of standby guardianship.**

(a) The authority of a standby guardian approved by the Court pursuant to § 16-4805 may be revoked by the designator filing a notice of revocation with the Court.

(1) The notice of revocation shall identify the standby guardian or alternate standby guardian to whom the revocation shall apply.

(2) A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and to any alternate standby guardian who may be authorized to act. The revocation shall be delivered to the standby guardian and the alternate standby guardian by certified mail, restricted delivery, return receipt requested or by any other method allowed by local law.

(b) An executed designation not yet effective because a triggering event has not occurred or a petition has not been filed may be revoked by the designator or repudiated by the prospective standby guardian by notifying the other party in writing.

(c) A designation may also be revoked by the execution of a subsequent inconsistent designation.

(d) If at any time the Court finds that the designator no longer meets the definition of designator as that term is defined in § 16-4802(8), the Court shall rescind its approval of the standby guardian.

(e) The standby guardian shall file with the Court, as soon as practicable but no later than 90 days following a designator's death, a copy of the certificate of death. The standby guardian's failure to file within the 90-day period shall be grounds for the Court to rescind the authority of the standby guardian sua sponte. All acts undertaken by the standby guardian on behalf of and in the interest of the child before the Court's rescission shall be valid and enforceable.

(June 25, 2002, D.C. Law 14-152, § 2, 49 DCR 4248.)

**Legislative history of Law 14-152.** — For Law 14-152, see notes following § 16-4801.



## CHAPTER 49. AUTHORIZATION FOR MEDICAL CONSENT FOR A MINOR BY AN ADULT CAREGIVER.

Sec.

16-4901. Authorization for medical consent for  
a minor by an adult caregiver.

### § 16-4901. Authorization for medical consent for a minor by an adult caregiver.

(a) A parent, legal guardian, or legal custodian may authorize an adult person, in whose care a minor has been entrusted, to consent to any medical, surgical, dental, developmental screening and/or mental health examination or treatment, including immunization, to be rendered to the minor under the supervision or upon the advice of a physician, nurse, dentist or mental health professional licensed to practice in the District of Columbia, provided there is no prior order of any court in any jurisdiction currently in effect which would prohibit the parent, legal guardian, or legal custodian from exercising the power that they seek to convey to another person. Medical, surgical and dental treatment or examination may include any x-ray or anesthetic required for diagnosis or treatment.

(b) Any written form that is signed by the parent, legal guardian, or legal custodian may be used to convey the authority described in subsection (a) of this section. The form shown below is offered as a sample only and its inclusion in this section shall not be construed to preclude the use of alternative language. Any written statement signed by a parent, legal guardian, or legal custodian is governed by the laws of forgery of the District of Columbia as they are outlined in §§ 22-3241 and 22-3242.

(c) A conveyance of authority described in subsection (a) of this section which is consistent with the requirements of subsection (b) of this section shall be honored by any health care facility or practitioner described in subsection (e) of this section. Notwithstanding subsection (g) of this section, the existence of a written document conveying any authority described in subsection (a) of this section which is consistent with the requirements of subsection (b) of this section creates a presumption that the authority has been lawfully conveyed.

(d) A conveyance of authority described in this section is revocable at will, unless other terms are agreed to by the parent, legal guardian, or legal custodian and the person to whom authority is being conveyed. The parties may provide for terms in writing which would require the revocation of authority to be in writing, make revocation effective only when a specified time period has elapsed after notification of intent to revoke, or any other terms that the parties deem appropriate.

(e) A physician, surgeon, nurse, mental health professional, dentist, or other health care professional, or a hospital or medical facility, that relies on a written instrument that is consistent with the requirements of subsection (b) of this section which authorizes another adult to consent to medical treatment of the executor's minor child or ward shall not incur civil liability for treating a minor without legal consent if a reasonable and prudent health care

professional would have relied on the written instrument under the same or similar circumstances.

(f) This chapter is not intended to provide a substitute for protection proceedings conducted in the Family Division under Chapter 23 of this title.

(g) The execution of a document conveying any authority described in subsection (a) of this section shall not be binding in any future custody proceedings. Regardless of the execution of this document, any future custody determination shall be based on the best interests of the child or other applicable legal standard.

SUGGESTED FORM

1.

I am the parent of the child(ren) listed below and there are no court orders now in effect which would prohibit me from exercising the power that I now seek to convey; OR

I am the legal guardian or custodian of the child(ren) by court order (copy attached, if available) and there are no other court orders now in effect which would prohibit me from exercising the power that I now seek to convey.
2.

I am temporarily entrusting to \_\_\_\_\_, an adult who resides at \_\_\_\_\_, the care of the following child(ren):

Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

3.

The caregiver named above may consent to medical, dental, surgical and/or mental health diagnosis and treatment for the child(ren).
4.

I am giving this consent freely and knowingly in order to provide for the child(ren) and not due to pressure, threats, or payments by any person or agency.
5.

Upon notification of intent to revoke, there shall be a period of \_\_\_\_ hours before revocation takes effect. Notification of intent to revoke must be in writing.

(put a line through those provisions that are not applicable)

I hereby swear or affirm that the above statements are true, under penalty of law.

Name	Date
------	------

(Mar. 27, 1993, D.C. Law 9-264, § 2, 40 DCR 1049; Oct. 15, 1993, D.C. Law 10-33, § 2(b), 40 DCR 5760.)

**Prior Codifications.** — 1981 Ed., § 16-4901.

**Legislative history of Law 9-264.** — Law 9-264, the “Authorization for Medical Consent for Children in the Care of Adults Other than
 

Parents Temporary Amendment Act of 1992,”
was introduced in Council and assigned Bill No. 9-752. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the



Mayor on January 26, 1993, it was assigned Act No. 9-412 and transmitted to both Houses of Congress for its review. D.C. Law 9-264 became effective on March 27, 1993.

**Legislative history of Law 10-33.**— D.C. Law 10-33, the “Authorization for Medical Consent for Children in the Care of Adults Other than Parents Amendment Act of 1993,” was introduced in Council and assigned Bill No.

10-15, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-65 and transmitted to both Houses of Congress for its review. D.C. Law 10-33 became effective on October 15, 1993.

## CHAPTER 50. CRIMINAL RECORDS CHECK [REPEALED].

Sec.

16-5001 to 15-5008. [Repealed.]

## § 16-5001. Definitions. [Repealed].

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 2, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5001.

**Temporary Amendment of Section.** — For temporary (225 day) repeal of §§ 16-5001 through 16-5008 comprising Chapter 50 of Title 16 1981 Ed., see § 202(b) of the Adoption and Safe Families Temporary Amendment Act of 1999 (D.C. Law 13-56, March 7, 2000, law notification 47 DCR 1978).

**Temporary Addition of Section.** — For temporary (225 day) addition of §§ 16-5001 through 16-5008 comprising Chapter 50 of Title 16 1981 Edition, see §§ 2 to 9 of the Criminal Background Investigation for the Protection of Children Temporary Act of 1998 (D.C. Law 12-205, March 26, 1999, law notification 46 DCR 3431).

**Emergency legislation.** — For temporary addition of chapter, see § 2-9 of the Criminal Background Investigation for the Protection of Children Congressional Review Emergency Act of 1999 (D.C. Act 13-6, February 8, 1999, 46 DCR 2296).

For temporary repeal of this chapter, see § 202(b) of the Adoption and Safe Families Emergency Amendment Act of 1999 (D.C. Act 13-117, July 28, 1999, 46 DCR 6558).

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-257.** — Law 12-257, the “Criminal Records Check for the Protection of Children Act of 1998,” was introduced in Council and assigned Bill No. 12-694, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-608 and transmitted to both Houses of Congress for its review. D.C. Law 12-257 became effective on April 20, 1999.

**Legislative history of Law 13-136.** — Law 13-136, the “Adoption and Safe Families Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-214, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 31, 2000, it was assigned Act No. 13-315 and transmitted to both Houses of Congress for its review. D.C. Law 13-136 became effective on June 27, 2000.

## § 16-5002. Criminal records check required for certain individuals. [Repealed].

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 3, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5002.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of



1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Com-

pliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

## § 16-5003. Request for criminal records check. [Repealed].

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 4, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5003.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families

Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

## § 16-5004. Payment of fees. [Repealed].

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 5, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5004.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-205.** — For legislative history of D.C. Law 12-205, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

**§ 16-5005. Confidentiality of information to be maintained. [Repealed].**

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 6, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5005.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-205.** — For legislative history of D.C. Law 12-205, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

**§ 16-5006. Effect of failure to request criminal records check. [Repealed].**

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 7, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5006.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-205.** — For legislative history of D.C. Law 12-205, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

**§ 16-5007. Penalties for violations of act. [Repealed].**

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 8, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)



**Prior Codifications.** — 1981 Ed., § 16-5007.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-205.** — For legislative history of D.C. Law 12-205, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

## § 16-5008. Rules. [Repealed].

Repealed.

(Apr. 20, 1999, D.C. Law 12-257, § 9, 46 DCR 1309; June 27, 2000, D.C. Law 13-136, § 203, 47 DCR 2850.)

**Prior Codifications.** — 1981 Ed., § 16-5008.

**Temporary Addition of Section.** — Temporary addition of chapter: See note to § 16-5001.

**Emergency legislation.** — For temporary repeal of chapter, see note to § 16-5001.

For temporary (90-day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Emergency Amendment Act of 1999 (D.C. Act 13-383, July 24, 2000, 47 DCR 6700).

For temporary (90 day) repeal of this chapter, see § 3(b) of the Adoption and Safe Families Compliance Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-451, November 7, 2000, 47 DCR 9399).

For temporary (90 day) repeal of this chapter, see § 3(b) of Adoption and Safe Families Compliance Emergency Amendment Act of 2001 (D.C. Act 14-65, June 6, 2001, 48 DCR 5721).

**Legislative history of Law 12-205.** — For legislative history of D.C. Law 12-205, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 12-257.** — For legislative history of D.C. Law 12-257, see Historical and Statutory Notes following § 16-5001.

**Legislative history of Law 13-136.** — For history of Law 13-136, see notes under § 16-5001.

CHAPTER 51. JURY SELECTION.

Sec.

16-5101. Definitions.

16-5102. Confidentiality of certain information developed during jury selection.

Sec.

16-5103. Penalties.

16-5104. District of Columbia government agency source lists.

§ 16-5101. Definitions.

For the purposes of this chapter, the term:

(1) "Court" means the Superior Court of the District of Columbia.

(2) "Identifying information" means any information which would reasonable lead someone to be able to communicate with or contact a citizen without his or her prior permission.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856.)

**Legislative history of Law 16-272.** — Law 16-272, the "Jury Trial Improvements Act of 2006", was introduced in Council and assigned Bill No. 16-700, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and

December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-628 and transmitted to both Houses of Congress for its review. D.C. Law 16-272 became effective on March 14, 2007.

§ 16-5102. Confidentiality of certain information developed during jury selection.

(a) During the jury selection segment of any case pending in the Superior Court of the District of Columbia, the name, home address, business address (if any), and all other identifying information of any citizen who is called for jury service in that case shall not be used by anyone other than for the purpose of selecting a fair and impartial jury. After jury selection has been completed or terminated by the court, no person other than the subject of the identifying information or the court shall divulge or use the name, home address, business address (if any), or any other identifying information of any citizen who participated in that jury selection, whether or not the citizen was selected to serve on the jury, except as provided in subsections (b) and (c) of this section.

(b) An officer or employee of the court may divulge the name of any citizen who participated in jury selection pursuant to rules adopted by the court.

(c) Nothing contained in subsection (a) of this section shall be construed to prohibit a citizen, party, or attorney, or their agents, from divulging, making known, or using the identifying information of any citizen who is called for jury service where the party, attorney, or agent has obtained authorization from the court:

(1) Pursuant to § 11-1914(b) in connection with the preparation or presentation of a motion under § 11-1910; or

(2) Based upon good cause shown and pursuant to rules promulgated by the court.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856.)



**Legislative history of Law 16-272.** — For Law 16-272, see notes following § 16-5101.

### § 16-5103. Penalties.

Any violation of § 16-1502 shall be a misdemeanor punishable by a fine of up to \$500 or imprisonment of up to 180 days, or both.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856.)

**Legislative history of Law 16-272.** — For Law 16-272, see notes following § 16-5101.

### § 16-5104. District of Columbia government agency source lists.

Any agency or instrumentality of the District of Columbia government required to provide names and addresses of individuals to the Court pursuant to § 11-1905 for purposes of summoning individuals for jury service shall take all reasonable steps to ensure that the names and addresses are accurate, including:

(1) Entering into a memorandum of understanding with the Court for the prompt sharing of complete and accurate information; and

(2) The purging of inaccurate name and address information by the provider agency or instrumentality not less than once every calendar year.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856.)

**Legislative history of Law 16-272.** — For Law 16-272, see notes following § 16-5101.

## CHAPTER 53. UNSWORN FOREIGN DECLARATIONS; UNIFORM ACT.

Sec.

- 16-5301. Short title.
- 16-5302. Definitions.
- 16-5303. Applicability.
- 16-5304. Validity of unsworn declaration.
- 16-5305. Required medium.
- 16-5306. Form of unsworn declaration.

Sec.

- 16-5307. Uniformity of application and construction.
- 16-5308. Relation to Electronic Signatures in Global and National Commerce Act.

## § 16-5301. Short title.

This chapter may be cited as the “Uniform Unsworn Foreign Declarations Act”.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — Law 18-191, the “Uniform Unsworn Foreign Declarations Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-427, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 2, 2010, and March 16, 2010, respectively. Signed by the

Mayor on April 7, 2010, it was assigned Act No. 18-380 and transmitted to both Houses of Congress for its review. D.C. Law 18-191 became effective on July 23, 2010.

**Editor’s notes.** — Uniform Law: This section is based upon § 1 of the Uniform Unsworn Foreign Declarations Act.

## § 16-5302. Definitions.

For the purposes of this chapter, the term:

(1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) “Law” includes a District of Columbia statute, a judicial decision or order, an executive order, and an administrative rule, regulation, or order.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Sign” means, with present intent to authenticate or adopt a record,:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) “Sworn declaration” means a declaration in a signed record given under oath. The term “sworn declaration” includes a sworn statement, verification, certificate, and affidavit.

(7) “Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)



**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 2 of the Uniform Unsworn Foreign Declarations Act.

## § 16-5303. Applicability.<sup>\*</sup>

This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States, whether or not the location is subject to the jurisdiction of the United States. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Unsworn Foreign Declarations Act.

## § 16-5304. Validity of unsworn declaration.

(a) Except as otherwise provided in subsection (b) of this section, if a law of the District of Columbia requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter shall have the same effect as a sworn declaration.

(b) This chapter shall not apply to:

(1) A deposition;

(2) An oath of office;

(3) An oath required to be given before a specified official other than a notary public; or

(4) A declaration to be recorded with the Recorder of Deeds of the District of Columbia.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Unsworn Foreign Declarations Act.

## § 16-5305. Required medium.

If a law of the District of Columbia requires that a sworn declaration be presented in a particular medium, an unsworn declaration shall be presented in that medium.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301.

**Editor's notes.** — Uniform Law: This sec-

tion is based upon § 5 of the Uniform Unsworn Foreign Declarations Act.

§ 16-5306. Form of unsworn declaration.

An unsworn declaration under this chapter shall be in substantially the following form:

"I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"Executed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at  
 \_\_\_\_\_  
 (date) (month) (year)  
 \_\_\_\_\_ :  
 (city or other location, and state) (country):

\_\_\_\_\_  
 "(printed name)"

\_\_\_\_\_  
 "(signature)."

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301. tion is based upon § 6 of the Uniform Unsworn Foreign Declarations Act.

**Editor's notes.** — Uniform Law: This sec-

§ 16-5307. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301. tion is based upon § 7 of the Uniform Unsworn Foreign Declarations Act.

**Editor's notes.** — Uniform Law: This sec-

§ 16-5308. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400.)

**Legislative history of Law 18-191.** — For Law 18-191, see notes following § 16-5301. tion is based upon § 8 of the Uniform Unsworn Foreign Declarations Act.

**Editor's notes.** — Uniform Law: This sec-



## CHAPTER 55. STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION.

Sec.

16-5501. Definitions.

16-5502. Special motion to dismiss.

16-5503. Special motion to quash.

Sec.

16-5504. Fees and costs.

16-5505. Exemptions.

**§ 16-5501. Definitions.**

For the purposes of this chapter, the term:

(1) “Act in furtherance of the right of advocacy on issues of public interest” means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) “Claim” includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) “Issue of public interest” means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term “issue of public interest” shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker’s commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) “Personal identifying information” shall have the same meaning as provided in § 22-3227.01(3).

(Mar. 31, 2011, D.C. Law 18-351, § 2, 58 DCR 741.)

**Legislative history of Law 18-351.** — Legislative history of Law 18-351. Law 18-351, the “Anti-SLAPP Act of 2010”, was introduced in Council and assigned Bill No. 18-893, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first

and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-701 and transmitted to both Houses of Congress for its review. D.C. Law 18-351 became effective on March 31, 2011.

**§ 16-5502. Special motion to dismiss.**

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be

granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

(Mar. 31, 2011, D.C. Law 18-351, § 3, 58 DCR 741; Apr. 20, 2012, D.C. Law 19-120, § 201, 58 DCR 11235.)

**Effect of amendments.** — D.C. Law 19-120, in subsec. (c)(2), substituted “specified discovery” for “specialized discovery”.

**Emergency legislation.** — For temporary (90 day) amendment of section, see § 201 of Receiving Stolen Property and Public Safety Amendments Emergency Amendment Act of 2011 (D.C. Act 19-261, December 21, 2011, 58 DCR 11232).

For temporary (90 day) amendment of section, see § 201 of Receiving Stolen Property and Public Safety Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-326, March 19, 2012, 59 DCR 2384).

**Legislative history of Law 18-351.** — For history of Law 18-351, see notes under § 16-5501.

**Legislative history of Law 19-120.** — Law 19-120, the “Receiving Stolen Property and Public Safety Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-215, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 21, 2011, it was assigned Act No. 19-262 and transmitted to both Houses of Congress for its review. D.C. Law 19-120 became effective on April 20, 2012.

## CASE NOTES

### Construction with federal law.

District of Columbia’s anti-SLAPP (Strategic Lawsuit Against Public Participation) statute’s special motion to dismiss procedure attempted to answer same question covered by federal rules governing motions to dismiss and for summary judgment, whether court could dismiss company’s tort claims with prejudice on preliminary basis based on pleadings or on matters outside pleadings merely because company had not demonstrated that claim was likely to succeed on merits, so that District of Columbia law would be preempted to extent that it would not apply in federal court sitting

in diversity, if federal rules were valid under Rules Enabling Act; although special motion to dismiss might raise arguments that were identical to motion to dismiss, District statute ultimately mandated dismissal with prejudice if plaintiff failed to demonstrate likelihood of success on merits, even where plaintiff raised genuine issue of material fact and even where dismissal without prejudice was appropriate. 3M Co. v. Boulter, 842 F.Supp.2d 85, 2012 U.S. Dist. LEXIS 12860 (2012), appeal dismissed by 2012 U.S. App. LEXIS 24828 (D.C. Cir. Oct. 19, 2012), amended by 2012 U.S. Dist. LEXIS 151231 (D.D.C. Oct. 22, 2012).

## § 16-5503. Special motion to quash.

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.



(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

(Mar. 31, 2011, D.C. Law 18-351, § 4, 58 DCR 741.)

**Legislative history of Law 18-351.** — For history of Law 18-351, see notes under § 16-5501.

### § 16-5504. Fees and costs.

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

(Mar. 31, 2011, D.C. Law 18-351, § 5, 58 DCR 741.)

**Legislative history of Law 18-351.** — For history of Law 18-351, see notes under § 16-5501.

### § 16-5505. Exemptions.

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

(1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and

(2) The intended audience is an actual or potential buyer or customer.

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741.)

**Legislative history of Law 18-351.** — For history of Law 18-351, see notes under § 16-5501.













